83-818

SUPREME COURT OF THE UNITED STATES

October Term, 1983

No._____

JOSEPH L. DAUTREMONT, JR , AND DELORES A. DAUTRMONT,

Appellants,

vs.

COUNTY OF VENTURA, A BODY CORPORATE AND POLITIC,

Appellee.

APPEAL FROM THE COURT OF APPEAL STATE OF CALIFORNIA SECOND APPELLATE DISTRICT

JURISDICTIONAL STATEMENT

FRANK A. GUNDERSON
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QUESTION PRESENTED

Whether Article XIIIA of the California Constitution is violative of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution when applied to require appellants to pay an ad valorem property tax which is greatly disparate relative to similarly circumstanced properties due solely to the date of transfer of that property.

CERTIFICATION AS TO INTERESTED PARTIES

The undersigned Petitioner, certifies that the following listed parties have an interest in the outcome of this case. These representations are made to enable justices of the Court to evaluate possible disqualifications or recusal.

There are no other interested parties other than those named in the caption of this case and their attorneys of record.

by_____

Frank A. Gunderson
Member of the Bar
United States Supreme Court

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SUPREME COURT OF THE UNITED STATES

October Term, 1983

No._____

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Appellants,

vs.

COUNTY OF VENTURA, A BODY CORPORATE AND POLITIC,

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Joseph L. Dautremont, Jr., and Delores A. Dautremont, appellants, appeal from the final judgment of the Court of Appeal, Second District, State of California, filed June 23, 1983, holding that Article XIII-A of the California Constitution, as applied to appellants, is not violative of appellants' right to equal protection as guaranteed by the Fourteenth Amendment to the Constitution of the United States. Hearing by the California Supreme Court was denied August 17, 1983.

OPINIONS BELOW

The opinion of the California Court of Appeal, Second District, Division Six, which appears in the appendix hereto, Pg. 19, infra, is not reported.

The judgment of the Superior Court for Ventura County, the Honorable Marvin H. Lewis, presiding, dated January 14, 1982, which appears in the appendix hereto, pg. 26 infra, is not reported. This judgment followed the trial court's Memorandum of Intended Decision dated December 21, 1981, reprinted in the appendix hereto, pg. 29, infra.

The Findings of Fact and Decisions of the Board of Equalization for the County of Ventura relative to appellants' Applications for Changed Assessment for the tax years 1978-79 and 1979-80, are not reported. They are reprinted in the appendix hereto, pg. 48 and pg. 59, respectively, infra.

JURISDICTION

The opinion of the California Court of Appeals, Second District, Division Six, which held that the ad valorem taxation scheme mandated by Article XIIIA of the California Constitution does not violate appellants' right to equal protection, was entered June 23, 1983. See pg. 19, infra. Petition for Hearing by the Supreme Court of the State of California, reprinted herein at pg. 63, was denied on August 17, 1983. See pg. 97, infra.

Supplemental notice of appeal to this Court was duly filed in the California Court of Appeal, Second District, on September 8, 1983. See pg. 98, infra.

This appeal is being docketed within 90 days from the denial of hearing by the California Supreme Court. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. section 1257(2).

CONSTITUTIONAL PROVISIONS

Fourteenth Amendment, United States Constitution:

Section One:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article XIIIA, California Constitution:

Section 1. Maximum amount of ad valorem tax

(a) The maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties.

(b) The limitation provided for in subdivision (a) shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on any indebtedness approved by the voters prior to the time this section becomes effective.

Section 2. Assessment at full cash value

(a) The full cash value means the county assessor's valuation of real property as shown on the 1975-76 tax bill under "full cash value" or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment. All real property not already assessed up to the 1975-76 full cash value may be reassessed to reflect that valuation. For purposes of this section, the term "newly constructed" shall not include real property which is reconstructed after a disaster, as declared by the Governor, where the fair market value of such real property, as reconstructed, is comparable to its fair market value prior to the disaster.

(b) The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent (2%) for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction, or may be reduced to reflect substantial damage, destruction or other factors causing a decline in value. (c) For purposes of subdivision (a), the Legislature may provide that the term " newly constructed" shall not include the construction or addition of any active solar energy system.

RAISING THE FEDERAL QUESTION

At the earliest stages of appellants' claim, in the proceedings before the Ventura County Board of Equalization, appellants claimed that the provisions of Article XIIIA, section 2, as applied to them, were violative of their right to equal protection under the Fourteenth Amendment to the United States Constitution. See Finding of Fact and Decision, 1978 Assessment, and Finding of Fact and Decision, 1979 Assessment, of the Ventura County Board of Equalization, pgs. 48 and 59, respectively, infra. That Board found that the claims were based, so far as is relevant here, on grounds that "Article XIIIA of the California Constitution denied [appellants] equal protection under the law" [see pgs. 48 and 59, infra].

Again in appellants' Amended Complaint for Refund of Taxes, Case No. C311905 filed March 13, 1980 in the Superior Court for the County of Los Angeles [later transferred to the Superior Court for Ventura County for the convenience of all parties, and renumbered Case No. 72963], the equal protection issue was raised. Said amended complaint is reprinted in the appendix hereto, at pg. 102. The issue was fully addressed in appellants' [plaintiffs below] trial brief, appellee's [defendant below] trial brief, and appellants' [plaintiffs'] reply brief. Trial briefs are reprinted in the appendix hereto, at pg. 111.

The Superior Court, deciding the case on the briefs,

found that constitutionality of Article XIIIA had been decided by the California Supreme Court in **Amador Valley Joint Union High School District v. State Board of Equalization** (1978) 22 Cal.3d 208, 583 P.2d 1281, 149 Cal.Rptr. 239, that Court specifically holding that Article XIIIA was not violative of equal protection under the Fourteenth Amendment. See the trial court's Memorandum of Intended Decision, pg. 29, infra.

Appellants continued to press their equal protection claim in their appeal to the California Court of Appeals. See Appellants' Opening Brief filed in that Court, reprinted at pg. 168, infra. That Honorable Court also deferred to the prior decision of the California Supreme Court in Amador Valley, holding that the equal protection issue had been fully considered and decided, and that Article XIIIA is not violative of appellants' right to equal protection as guaranteed by the Fourteenth Amendment of the United States Constitution. See pg. 19, infra.

Appellants petitioned the California Supreme Court for hearing on the decision of the Court of Appeals, again citing their claim that Article XIIIA of the California Constitution violated their right to equal protection under the Fourteenth Amendment to the United States Constitution. See pg. 63, infra. That petition was denied [pg. 97, infra].

It can be readily seen that appellants have, at their earliest opportunity and consistently thereafter, com-

plained that Article XIIIA is violative of equal protection under the law as guaranteed by the Fourteenth Amendment to the United States Constitution. The California courts have expressly considered this claim, and have held that this provision of the California Constitution does not violate appellants' right to equal protection under the federal constitution.

STATEMENT OF THE CASE

Appellants took title to their home on February 9, 1978. On June 6, 1978, the people of the State of California approved an initiative measure known as Proposition 13. This initiative measure was subsequently incorporated into the State Constitution as Article XIIIA.

Section 1(a) of Article XIIIA provides, in essence, that the maximum ad valorem tax on real property shall not exceed one percent (1%) of full cash value of the property.

Section 2(a) of Article XIIIA, in essence, defines full cash value to be the assessor's valuation of the property as shown on the 1975-76 tax bill [established as of the lien date, March 1, 1975] or, when newly constructed or purchased after March 1, 1975, the actual appraised [sale] value.

Section 2(b) of Article XIIIA provides that the full cash value, as defined in section 2(a) may increase by not more than two percent (2%) in any given year to reflect inflation.

Section 2(a) is the famous [or infamous] "rollback" provision, under which the 1978 electorate had their property tax rolled back to the 1975-76 level, while requiring those taking title after the 1975-76 lien date to pay taxes based upon full acquisition value. It is this second class of taxpayer to which appellants are relegated

Pursuant to provisions of section 2(a), appellants' tax bill for the 1978-79 tax year was calculated by multiplying appellants' acquisition cost ($126,000.00) by the one percent (1%) tax rate. Had appellants' tax bill been calculated on the same basis as those sent to taxpayers holding title on the 1975-76 lien date, (the "first class") their tax bill would have been calculated by adding the inflation factor to assessed value for 1975-76 ($53,500.00) and multiplying that total ($56,774.63) by the one percent (1%) tax rate. For the 1979-80 tax year, the "assessed value" pursuant to section 2(a), was $128,520.00. Had that year's tax bill been calculated on the same basis as those presented to members of the "first class", the "assessed value" would have been $53,822.84.

Subsequent to receipt of their tax bill for tax year 1978-79, appellants timely filed Application for Changed Assessment with the Board of Equalization for Ventura County on grounds that, so far as relevant here, appraisal of their property as of the transfer date, rather than the 1975-76 lien date [base year] resulted in denial of that equal protection afforded by the Fourteenth Amendment

to the United States Constitution, and that if the 1975-76 base year valuation were used the assessed valuation of their home would be $56,774.63, as opposed to the assessor's appraisal of $126,000.00.

The Board of Equalization found as fact, following hearing:

(1) The property had changed ownership on February 9, 1978.

(2) The purchase price on February 9, 1978 was $126,000.00.

(3) The purchase price was the properly enrolled value under Article XIIIA, section 2(a) of the California Constitution.

(4) The Board of Equalization lacks jurisdiction to rule on the constitutionality of Proposition 13 [Article XIIIA].

Subsequent to receipt of their tax bill for tax year 1979-80, appellants again timely filed Application for Changed Assessment. This application, as had their prior one, cited denial of equal protection and alleged a proper assessed value to be $57,910.12 if calculated on the basis of the "base year" 1975-76 rather than the "transfer date value" of $126,000.00 increased according to section 2(b) to $128,520.00.

The Board of Equalization found as fact, following hearing:

(1) The Board of Equalization does not have jurisdiction to rule upon the constitutionality of Article XIIIA of the California Constitution.

(2) Applicant presented no evidence of value other than the 1978 sale price.

(3) The assessment of $128,516.00 was correct.

Following the actions by the Board of Equalization, appellants filed suit in pro per in Small Claims division of Ventura County Municipal Court, then, with benefit of counsel, in Superior Court of the County of Los Angeles. By stipulation, that suit was transferred to Ventura County. In sum, that suit alleged that the tax levied on appellants' home for tax years 1978-79 and 1979-80 were excessive by virtue of having been calculated according to section 2(a) of Article XIIIA of the California Constitution, in derogation of appellants' right to equal protection.

Judgment on appellants' complaint was for defendant, County of Ventura, on grounds that the issue had been decided by the California Supreme Court, and that said decision had held no violation of equal protection was presented by Article XIIIA.

Upon appeal to the California Court of Appeals, Second District, decision was made to the same effect. See pg. 19, infra. Petition for hearing having been denied by the California Supreme Court, the decision of the Court of Appeal affirming the trial court must be deemed as affirmed by the highest court in the State of California.

THE QUESTION IS SUBSTANTIAL

The question as to equal protection in regard to taxpayers is of utmost importance in preventing the imposition of taxes upon various similarly situated and substantially indistinguishable members of a class based upon caprice, whimsy, or outright favoritism, including tyrannical favoritism of and by the majority. This issue has been exhaustively treated by this Court in respect to mines, railroads and interstate commerce. This case presents issues similar to those decided by this Court many times in the past, but the complaining taxpayer here is but a homeowner.

Homes are, of course, subject to taxation. The owners thereof enjoy, generally, the same governmental services as are enjoyed by the general population. Some services enjoyed by homeowners may be viewed as peculiarly theirs, such as fire and flood protection and subsidized mortgages. There is no question that homes may be taxed on the basis of their value. Here, however, we are presented with a case in which homes are not taxed on the basis of their relative values, nor on the basis of any demonstrable difference except the point in time at which they are acquired. This results in greatly disparate taxes being assessed against substantially identical homes owned by indistinguishable taxpayers. A large and closed class of taxpayer enjoys an artificially created assessment based

upon the assessed value of his property on March 1, 1975. The remainder of the state's taxpayers pay taxes based on an acquisition value inflated by an otherwise irrelevant period of price escalation. In appellants' case, this price escalation resulted in taxation of their home in 1978-79 to an extent more than double that which would have been obtained had the tax bill been calculated on the 1975-76 value. Since the costs of governmental services tend to increase with other costs, and there can be no demonstrable difference in the level of services received by appellants and their neighbors who bought two years earlier, appellants and other members of their class can be seen to be forced to subsidize similarly situated taxpayers who, by the accident of their acquisition date, are members of that favored class who took title to their property prior to March 1, 1975, and who pulled the voting levers in the 1978 elections.

It is a basic tenet of our law that "the Fourteenth Amendment forbids the states to deny to any person within their jurisdiction the equal protection of the laws". **Western Southern Life Insurance Company v. State Board of Equalization**, (1981) 451 U.S. 648, 656-657, 101 S.Ct. 2070, 67 L.Ed. 2d 514, 523. Appellants concede that "where taxation is concerned and no specific federal right, apart from Equal Protection, is imperiled, the states have large leeway in making classifications - - - - which

in their judgment produce reasonable systems of taxation - - -." **Kahn v. Shevin**, (1947) 416 U.S. 351, 355-356, 94 S.Ct. 1734, 40 L.Ed. 2d 189. Here, however, Equal Protection is imperiled, and "[t]he Equal Protection clause of the Fourteenth Amendment protects the individual from state action which selects him out for discriminatory treatment by subjecting him to taxes not imposed on others of the class" **Hillsborough v. Cromwell**, (1946) 326 U.S. 620, 623, 66 S. Ct. 445, 90 L. Ed. 358. Further, classifications of taxpayers "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike". **Royster Guano Co. v. Virginia** (1920) 253 U.S. 412, 415, 4 S. Ct. 560, 64 L. Ed. 989. And, the classificatory scheme must "rationally advance a reasonable and identifiable governmental objective - - - -". **Schwerken v. Wilson** (1981) 450 U.S. 221, 101 S. Ct. 1074, 1083, 67 L. Ed. 2d 186.

In the instant case, appellants are selected out to pay greatly disparate taxes relative to other taxpayers of the same class - i.e., homeowners. This is patently unequal and discriminatory treatment imposed under the law of the State of California. There has been no showing of any ground of difference in these two classes of homeowner/taxpayer, much less a difference having a substantial relation to the object of the legislation. Neither has this

scheme been shown to rationally advance any reasonable and identifiable governmental objective. Indeed, no objective has even been identified which is not in conflict with the terms of the scheme itself.

CONCLUSION

For the foregoing reasons, appellants respectfully submit that this Court ought to note probable jurisdiction of this appeal.

Respectfully submitted,

Frank Anton Gunderson
Attorney for Appellants

Date:

STATEMENT OF RELATED CASES

Pursuant to Rules of the United States Supreme Court, Appellant knows of no cases that are related to this appeal.

DATED: November 11, 1983

Frank Anton Gunderson
Attorney for Appellants

APPENDIX

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

JOSEPH L. DAUTREMONT, JR., et al.,

Plaintiffs and Appellants,

v.

COUNTY OF VENTURA,

Defendant and Respondent.

2d Civil No. 65479
(Ventura County Super. Ct. No. 72963)
COURT OF APPEAL-SECOND DIST.

FILED
JUN 23, 1983
CLAY ROBBINS, JR. Clerk
Deputy Clerk

Appellants Dautremont raise the sole issue of whether Article XIII A, section 2(a) of the California Constitution,

which requires that property be valued for purposes of property taxation based upon its value at time of acquisition, violates equal protection under the law in that it results in disparate tax treatment between owners of similar properties. The trial court gave judgment for defendant County of Ventura. We affirm.

STATEMENT OF FACTS

Appellants purchased their single family residence in the City of Simi Valley, County of Ventura, on February 9, 1978. On June 6, 1978, the people of the State of California adopted the initiative measure known as Proposition 13 adding Article XIII A to the California Constitution. Section 2(a) of Article XIII A provides that "the full cash value (to which the 1 percent maximum tax applies) means the County Assessor's valuation of real property as shown on the 1975-76 tax bill under 'full cash value' or, thereafter, the appraised value of real property when purchased, newly constructed, or a change of ownership has occurred after the 1975 assessment."

Pursuant to the mandate of Article XIII A, the Ventura County assessor appraised appellants' real property for the 1978-1979 tax year based upon its value at time of acquisition, i. e., the purchase price of $126,000.

Subsequent to receipt of their tax bills for tax years 1978-1979 and 1979-1980, appellants timely filed Application for Changed Assessments on the grounds, so far

as is relevant to this appeal, that Article XIII A denied them equal protection under both federal and state Constitutions. Appellants testified before the Board of Equalization that the full cash value of their residence, based upon the 1975-1976 tax bill, and increased by 2 percent per year, was $56,774.63 and $57,910.12 for the 1978-1979 and 1979-1980 tax years respectively. Appellants' calculations were based upon the full cash value for their property as reflected in the 1975-1976 tax rolls increased pursuant to Article XIII A, section 2(b). Section 2(b) provides: "The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction, . . ." Appellants' contention was that their property should be taxed at the 1975 value rather than the 1978 value of acquisition.

The Board of Equalization denied appellants' applications for both tax years 1978-1979 and 1979-1980 on the grounds that the constitutionality of the law was not within the board's jurisdiction. The board sustained the property value as enrolled by the assessor.

Appellants filed suit in small claims court. Said suit was transferred to superior court pursuant to Code of Civil Procedure section 396. Trial was held December 21, 1981. The trial court, sitting without a jury, rendered judgment for defendant on January 14, 1982. This appeal followed.

ISSUE

Appellants contend that Article XIII A of theConstitution of the State of California deprives them of equal protection under the law, as guaranteed them by the Constitution of the State of California and the United States, in that it imposes upon them a tax greatly in excess of that imposed upon similar properties.

DISCUSSION

The trial court based its ruling on the case of **Amador Valley Joint Union High School District v. State Board of Equalization** (1978) 22 Cal.3d 208, which addressed the equal protection challenge. Appellants, however, contend that (1) **Amador Valley** did not closely examine section 2(a) of Article XIII A and is therefore distinatishable, (2) that the "grandfather clause" rationale of **Amador Valley** is not able to justify an arbitrary roll back date, and (3) that Article XIIIA section 2(a) as it is applied to appellants is in conflict with Article XIII section 1 which provides that all property shall be taxed in proportion to its full value.

In **Amador Valley Joint Union High School District v. State Board of Equalization**, cited **supra**, petitioners therein contended that, by reason of the "roll back" of assessed value to the 1975-1976 fiscal years, two substantially identical homes, located "side by side" and

receiving identical governmental services, could be assessed and taxed at different levels depending upon their date of acquisition and that such a disparity in tax treatment constitutes an arbitrary discrimination in violation of the federal equal protection clause. (Amend. XIV §1.) The California Supreme Court, noting that although arguably premature, stated "[N]evertheless, we have elected to treat the equal protection issue as constituting an attack upon the face of the article itself, because the assessors throughout this state must be advised whether to follow the new assessment procedure. As will appear, we will conclude that the essential demands of equal protection are satisfied by a rational basis underlying section 2 of the new article." (22 Cal.3d at p. 233.)

The rational basis, the court explained, is the theory that the annual taxes that a property owner must pay should bear some rational relationship to the original cost of the property, predicated on the owner's free and voluntary act of purchase rather than relate to an unforeseen, perhaps unduly inflated, current value. The Supreme Court found that there is no legal requirement that property of equal current value be taxed equally, and that a tax law discriminates against a certain class does not make it arbitrary if the discrimination is founded upon a reasonable distinction, or difference in state policy, not in conflict with the federal Constitution.

Appellants herein contend that the prior analysis of Ar-

ticle XIII A was not a serious and genuine review of the equal protection issue as to appellants and should not be viewed a controlling. We find this argument without merit. The Supreme Court in **Amador Valley** specifically addressed the same argument made by appellants herein that the intentional, systematic **under-valuation** of property similarly situated with other property assessed at its full value constitutes an improper discrimination in violation of equal protection principles. Much of the authority to which appellants refer for this proposition was cited by petitioners in **Amador Valley**. The court therein stated that section 2 does not unduly discriminate against persons who acquired their property after 1975 "for those persons are assessed and taxed in precisely the same manner as those who purchsed in 1975, namely, on an acquisition value basis predicated on the owner's free and voluntary acts of purchase. This is an arguably reasonable basis for assessment." (22 Cal.3d at p. 235.)

Appellants contend that the rationale of a grandfather clause (to prevent existing business from suffering from increased regulation) does not automatically apply to the roll back of property valuation as applied to private residences. The Supreme Court, however, said only that "[t]he selection of the 1975-1976 fiscal year as a base year, although seemingly arbitrary, may be considered as comparable to utilization of a "grandfather clause" wherein a particular year is chosen as the effective date of new legis-

lation in order to prevent inequitable results or to promote some other legitimate purpose. [Citations.] (22 Cal.3d at p. 236.)

We cannot find the appellants herein have raised arguments substantively different from those previously addressed and therefore hold that **Amador Valley Joint Union High School District v. State Board of Equalization** is controlling.

We affirm the judgment of the trial court.

NOT TO BE PUBLISHED.

STONE, P. J.

We concur:

ABBE, J.

GILBERT, J.

Marvin H. Lewis, Judge

Superior Court County of Ventura

Dorothy L. Schechter, County Counsel, Anthony R. Strauss, Assistant County Counsel, for Defendant and Respondent.

Frank Anton Gunderson, for Plaintiffs and Appellants.

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800 South Victoria Avenue
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Telephone: (805) 654-2588

Attorneys for Defendant

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA**

JOSEPH L. DAUTREMONT, et al.,

Plaintiffs,

No. 72963

JUDGMENT

vs.

COUNTY OF VENTURA, a Body Corporate and Politic,

Defendant.

This case came on regularly for trial on December 21, 1981, in Department 7 of the above-entitled court, the Honorable Marvin H. Lewis, judge presiding, sitting without a jury. Frank Anton Gunderson appeared for plaintiffs Joseph L. Dautremont, Jr., and Delores A. Dautremont, and Dorothy L. Schechter, County Counsel, by Anthony R. Strauss, Assistant County Counsel, appeared for the defendant County of Ventura.

The court having considered the evidence and the arguments of counsel and being fully advised makes the following judgment:

IT IS HEREBY ADJUDGED, ORDERED AND DECREED that:

1. Defendant County of Ventura shall have judgment against plaintiffs and plaintiffs shall take nothing by this action; and

2. Plaintiffs shall pay for defendant's cost of suit incurred herein.

Dated: JAN 14, 1982

JUDGE OF THE SUPERIOR COURT

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) ss.
COUNTY OF VENTURA)

ELIZABETH L. SANDOVAL states:
That I am a citizen of the United States, over the age of 18, (employed in) (a resident of) the County of Ventura, and am not a party to the within action or proceeding; that my business address is County Counsel's Office, 800 South Victoria Avenue, Ventura, California; that on JANUARY 18, 1982 , I served the within JUDGMENT on:

Frank A. Gunderson
2239 Townsgate Road
Suite 202
Westlake Village, California 91361

by addressing an envelope to each of the above-named persons as indicated above, and placed in each envelope a true copy of each of said documents, and by then sealing and depositing said envelope, with postage thereon fully prepaid, in the United States mail at Ventura, California, where is located the office of the attorney for the persons by and for whom said service was made.

Executed on JANUARY 18, 1982, at Ventura, California.

I declare under penalty of perjury that the foregoing is true and correct.

ELIZABETH L. SANDOVAL

FILED
DATE: DEC 21, 1981
Robert L. Hamm, County Clerk
By:
Deputy County Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

JOSEPH L. DAUTREMONT, et al.,

Plaintiffs,

v.

COUNTY OF VENTURA, a Body Corporate and Politic,

Defendant.

No. 72963
MEMORANDUM OF INTENDED DECISION

The subject action came on regularly for trial by the court sitting without a jury on December 21, 1981, Frank Anton Gunderson appearing for the plaintiffs, Joseph L. Dautremont, Jr., and Delores A. Dautremont, and Dorothy L. Schechter, County Counsel, by Anthony R. Strauss, Assistant County Counsel, appearing for the defendant, County of Ventura.

The action is one whereby plaintiffs seek to recover certain real property taxes paid by them for tax years 1978-1979 and 1979-80. The facts are not in dispute and the only issue presented to the court for resolution is with respect to the constitutionality of Article XIII A of the California Constitution and in particular section 2(a) thereof.

In the court's view and as pointed out in paragraph II of Defendant's Trial Brief, this issue has been resolved by our Supreme Court in **Amador Valley Joint Union High School Dist. v. State Board of Equalization**, 22 Cal.3d 208 (1978). Plaintiffs' attempt to distinguish this case, while both interesting and to some extent appealing, is nevertheless not persuasive. It follows that defendant is entitled to judgment.

In accordance with the provisions of Rule 232 of the California Rules of Court, counsel for defendant is directed to prepare, serve and submit an appropriate form of judgment.

Dated: December 21, 1981

MARVIN H. LEWIS
Judge of the Superior Court

SUPERIOR COURT STATE OF CALIFORNIA
County of Ventura

DATE: December 21, 1981

TIME: 9:00 A.M.

Hon. MARVIN H. LEWIS
ANNETTE STEWART

JUDGE
Deputy County Clerk
Deputy Sheriff
Court Reporter

JOSEPH L. DAUTREMONT, et al.,
No. 72963

vs.

Counsel for

COUNTY OF VENTURA,
A Body Corporate and Politic

Counsel for

NATURE OF PROCEEDINGS:
RULING ON SUBMITTED MATTER

Trial in the above entitled action having been heretofore heard and submitted, the court now causes to be filed its memorandum of intended decision setting forth that defendant is entitled to judgment.

In accordance with the provisions of Rule 232 of the California Rules of Court, counsel for defendant is directed to prepare, serve and submit an appropriate form of judgment.

ROBERT L. HAMM, County Clerk By

Deputy County Clerk

MINUTES

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA

CASE NO. 72963
DECLARATION OF [X] MAILING [ ] POSTING
[ ] PERSONAL SERVICE

I, ROBERT L. HAMM, County Clerk of the Superior Court of the County of Ventura, State of California, declare under penalty of perjury that I am not a party to the within action or proceeding and that on Dec. 22, 1981,
[ ] I deposited

[X] With postage prepaid in sealed envelopes, in the United States Post Office at the City of Ventura,

[ ] In the interoffice mail at the County of Ventura, full, true and correct copies of the annexed document, enclosed in separate envelopes, one of which was addressed to each of the following-named persons at the place hereinafter set opposite each name. Each of the places hereinafter specified is the place of residence/business of the person opposite whose name it is set, and there is a regular daily communication by the United States/Interoffice mail between the place of mailing and the place so addressed.

[ ] I posted a full, true and correct copy of the annexed document at the front door of the Courthouse where the Superior Court of the County of Ventura, State of Califor-

nia, is held in the City of Ventura, County of Ventura, State of California.

[ ]I personally served the following-named persons at the place hereinafter set opposite each name, with a full, true and correct copy of the annexed document.

Frank Anton Gunderson, Esq.
2239 Townsgate Road
Westlake Village, CA 91361

Dorothy L. Schechter,
County Counsel
Anthony R. Strauss
Assistant County Counsel

800 South Victoria Avenue
Ventura, CA 93009

Dated and executed at Ventura, California, on Dec. 22 1981.

ROBERT L. HAMM, County Clerk

By:
Deputy County Clerk

DECLARATION OF MAILING/POSTING/SERVICE

Frank Anton Gunderson
2239 Townsgate Road
Suite 202
Westlake Village, CA 91361
(805) 496-6567

Attorney for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

JOSEPH L. DAUTREMONT, JR. and DELORES A. DAUTREMONT,

Plaintiffs,

vs.

COUNTY OF VENTURA, a Body Corporate and Politic,

Defendants.

Case No. 72963

ADDUNDUM TO AMENDED COMPLAINT FOR REFUND OF TAXES PREVIOUSLY FILED (EXHIBIT A-1 to A-7) and EXHIBIT B-1 to B-6)

SECURED ROLL

APPLICATION FOR CHANGED ASSESSMENT

(THIS APPLICATION MUST BE FILED ON OR BEFORE ~~AUGUST 31~~)

SEP 30 1978

APPLICATION NUMBER 10591

PG. 1 OF 2

VENTURA COUNTY BOARD OF EQUALIZATION
800 SOUTH VICTORIA AVENUE, VENTURA, CALIFORNIA, 93009 - PHONE (805) 654-2252

APPLICANT MUST COMPLETE APPLICABLE ITEMS 1 - 17 OR APPEAL MAY BE DENIED

1. PARCEL NO./ACCOUNT NO.	2. NAME OF OWNER ON CURRENT ROLL	3. CURRENT USE OF PROPERTY
635-0-121-240	Dautremont Joseph L Jr -D A	dwelling

	4. MAIL NOTICES TO THIS ADDRESS	5. NAME/ADDRESS OF APPLICANT/ AGENT IF DIFFERENT THAN ITEM 4.	6. LOCATION OF PROPERTY
NAME	J.L. Dautremont, Jr.		28 Taxco Ct.
STREET ADDRESS	28 Taxco Court		Simi Valley, CA 930
CITY, STATE ZIP CODE	Simi Valley, CA 93065		

7. APPLICANT'S PHONES BUSINESS	HOME	8. AGENT'S PHONES BUSINESS	HOME
(805) 527-9161	(805) 527-0161		

VALUE	9. CURRENT ASSESSMENTS ON ROLL	10. ASSESSOR'S APPRAISAL OF FULL VALUE	11. APPLICANT'S OPINION OF FULL VALUE
Land	$ 2625	$ 10500	$ 9550.88
Structure	$ 28875	$ 115500	$ 43136.47
TOTAL	$ 31500	$ 126000	$ 52687.35
Fixtures	$	$	$
Personal Property	$	$	$
Inventory	$	$	$

12. AUTHORIZATION

IF THE APPLICANT IS A CORPORATION, THE AGENT'S AUTHORIZATION MUST BE SIGNED BY AN OFFICER OF THE CORPORATION.

IF THE AGENT IS NOT AN ATTORNEY LICENSED IN CALIFORNIA, OR THE SPOUSE, CHILD OR PARENT OF THE PERSON AFFECTED, THE FOLLOWING MUST BE COMPLETED:

_____ IS HEREBY AUTHORIZED TO ACT AS MY AGENT IN THIS APPLICATION. DATED: _____

Penalty	$	$	$	SIGNATURE OF OWNER

THE SINGLE FACT THAT YOUR TAXES OR VALUE INCREASED WILL NOT SUPPORT THIS APPEAL AND WILL RESULT IN DENIAL

13. The facts that I rely upon to support the requested change in value are as follows:

- ☐ Assessor's Value exceeds recent sale price of this or comparable properties.
- ☒ Assessor's 1975 value and yearly increase are incorrect.
- ☒ Building damaged, demolished or incomplete on March 1.
- ☐ Property damaged by misfortune or calamity after March 1.
- ☐ Penal Assessment not justified.
- ☐ Allocation of exempt value is incorrect.
- ☐ Other: (attach explanation)

See attached sheet

14. A list of property transfers within the county which have occurred within the preceding two year period is open to inspection at the Assessor's office to the applicant upon payment of a fee of $10.00 and presentation of a filed copy of this application. (Not applicable for counties under 50,000 population.)

15. Is the subject property an owner-occupied single family residence? Yes ☒ No ☐
HEARING OFFICERS: If the total market value of the property does not exceed $100,000 or the property is a single family dwelling, condominium or cooperative, of a multiple family dwelling of four units or less, you may request that your hearing be conducted by an assessment hearing officer.
A HEARING OFFICER ☐ IS ☒ IS NOT REQUESTED.

16. Written Findings of Fact will be made available at $10.00 per parcel, but are only necessary if the applicant intends to seek judicial review of an adverse board decision. If so, a transcript is also necessary and a separate request therefor must be made to the clerk. A notice of the board's decision will automatically be sent to applicant at no cost.
☒ Findings of Fact are requested.

19.	Full Cash Value	Assessed Value
Land	$	$
Structures	$	$
TOTAL	$	$
Fixtures	$	$
Personal Property	$	$
Inventory	$	$
Inventory Exemption	$ XXXXXXXX	$
Other Exemption	$ XXXXXXXX	$
Penalty	$	$

17. I HEREBY DECLARE UNDER PENALTY OF PERJURY THAT THIS APPLICATION (INCLUDING ANY ACCOMPANYING STATEMENTS) HAS BEEN examined BY ME AND TO THE BEST OF MY KNOWLEDGE AND BELIEF IS TRUE, CORRECT AND COMPLETE.

Sept. 25, 1978 — Flores Fontremont
DATE — SIGNATURE OF APPLICANT (OWNER OR AGENT)

18. Shirley Weeks — 10/2/78
CLERK RECEIVING APPLICATION — DATE APPLICATION RECD.

20. REMARKS: _____

21. ACTION BY BOARD OF EQUALIZATION

- ☐ No change is made in current assessments shown in Item 9.
- ☐ Current assessments are changed as indicated in Item 19.

AYES: ABSENT:

NOES: ABSTAINED:

DATE: ROBERT L. rlAmint
CLERK OF THE BOARD

APPLICATION FOR CHANGED ASSESSMENT

1. Parcel # 635-0-121-240
2. Current owner Dautremont

Item 13.

1. Building damaged, demolished or incomplete March 1.

Loss and damage due to burglary: $4087.28

3 large ornate crystal chandeliers ... $3755.00
3 venetian blinds 263.18
1 window shade 69.10
$4087.28

2. Assessor's 1975 value and yearly increase are incorrect.

Year
Total cash value
1975-76 ..... 53500.

1976-77 (increased 2% according to Prop. 13) .... 54570.

1977-78 (increased 2% according to Prop. 13) 55661.40

1978-79 (increased 2% according to Prop. 13) 56774.63

NOTICE

The Revenue and Taxation Code of the State of California makes provisions for claims for refunds. The applicable sections are:

Section 5097.

> "No order for a refund under this article shall be made except on a claim:
>
> (a) Verified by the person who paid the tax, his guardian, executor, or administrator.
>
> (b) Filed within four years after making of the payment sought to be refunded or within one year after the mailing of notice as prescribed in Section 2635, whichever is later.
>
> An application for a reduction in an assessment filed pursuant to Section 1603 shall also constitute a sufficient claim for refund under this section if the applicant states in the application that the application is intended to constitute a claim for refund. If the applicant does not so state, he may thereafter and within the period provided in subdivision(b) file a separate claim for refund of taxes extended on the assessment which applicant applied to have reduced pursuant to Section **1603** or Section **1604**."

Section 5140.

> "The person who paid the tax, his guardian, the executor of his will, or the administrator of his

estate may bring an action in the superior court against a county or a city to recover a tax which the board of supervisors of the county or the city council has refused to refund on a claim filed pursuant to Article 1 (commencing with Section 5096) of this chapter.---"

Section 5141.

"An action brought under this article shall be commenced within six months from and after the date that the board of supervisors or city council rejects a claim for refund in whole or in part.

If an applicant for the reduction of an assessment states in the application that the application is intended to constitute a claim for refund pursuant to Section 5097, the claim for refund shall be deemed denied on the date the final installment of the taxes extended on such assessment becomes delinquent or on the date the equalization board makes its final determination on the application, whichever is later."

I do [x] do not [ ] wish to have this application constitute a claim for refund.

APPOINTMENT NOTICE

2/26/79
Date Notice Mailed

10591
(Application No.)

Your Board of Equalization hearing is set for March 26, 1979, at 1:30 p.m., in the Board of Supervisors Hearing Room, Ventura County Administration Building, 800 South Victoria Avenue, Ventura, California 93009.

The Board is required to find the full cash value of the property from the evidence presented at the hearing. This finding may grant the reduction request, or may exceed the full cash value as determined by the Assessor with the result that the assessment will be raised rather than lowered.

The applicant shall appear personally at the hearing on the matter, although he may have an agent make his presentation, unless at the time set for the hearing, the applicant is either absent from the County or by reason of health is unable to appear.

NON-APPEARANCE MAY RESULT IN DENIAL OF APPLICATION

If you decide to withdraw the application, please notify us promptly so the time may be assigned to others.

CALL: 654-2252

Robert L. Hamm
Clerk of the Board
By:

Deputy

BOARD OF EQUALIZATION
STATE OF CALIFORNIA
COUNTY OF VENTURA

10591

DATE: March 26, 1979

TIME: 1:30 p.m.

BOARD MEMBERS:

[x] David D. Eaton

[x] James Dougherty

[x] Edwin A. Jones

[x] Thomas E. Laubacher

[x] J. K. (Ken) MacDonald

APPLICATION NO. 10591

PARCEL NO. 635-0-121-240

OWNER'S NAME

J. L. Dautremont, Jr.

ASSESSOR'S REPRESENTATIVES

[x]Janice Calkins

COUNSEL FOR THE BOARD

[x] Shannon Trower

COUNSEL FOR THE APPLICANT

THIS IS THE TIME SET FOR HEARING WITH THE BOARD OF EQUALIZATION ON THE ABOVE MATTER

[ ] This matter is continued for hearing from

ON PROOF MADE TO THE SATISFACTION OF THE BOARD, THE BOARD FINDS:

[x] Notice of hearing was duly given by Clerk as required by law.

[x] The applicant is present.

[ ] That neither the applicant nor his agent is present, and upon the motion of , seconded by , the application is denied for lack of appearance.

THE NATURE OF THE APPLICATION, THE ASSESSED VALUE AS IT APPEARS ON THE LOCAL ROLL AND THE APPLICANT'S OPINION OF THE FULL CASH VALUE OF THE PROPERTY ARE GIVEN: THEREUPON, THE CHAIRMAN ASCERTAINS THE ASSESSOR'S RECOMMENDATION.

THE BOARD NOW HEARS THE APPLICANT'S AND THE ASSESSOR'S PRESENTATIONS.

[x] The applicant, sworn and testifies.

[x] The Assessor's representatives are sworn, remain sworn from previous hearing, and testify.

[ ] Finding of Fact are requested by ( ) applicant, ( ) Assessor.

THE MATTER IS NOW DULY SUBMITTED TO THE BOARD AND IT IS ADJUDGED:

[x] Upon motion of **Supervisor Eaton**, seconded by **Supervisor MacDonald** the Board of Equalization determines the full cash value of the property, which is the subject of this hearing, to be as stated on the attached finding of value sheet.

[ ] Takes the matter under submission.

[ ] Continues the matter to:

[ ] Makes its determination as follows:

[x] Exhibits received as follows: Assessor's Exhibit No. A.

COPIES TO:
Applicant
Assessor
Auditor-Controller
Tax Collector
Files (2)

BOARD OF EQUALIZATION

COUNTY OF VENTURA

STATE OF CALIFORNIA

FINDINGS OF FACT AND DECISION

1978 Assessment

Application No. 10591

Applicant: J. L. DAUTREMONT, JR.

Before the Board of Equalization consisting of Ventura County Supervisors David D. Eaton, J. K. "Ken" MacDonald, James Dougherty, and, as Chairman, Thomas E. Laubacher, the hearing on the above application was heard on March 26, 1979. The Assessor was represented by Janis Calkins, and the applicant was represented by Dolores Dautremont.

The applicant based the protest on two points:

1. Constitutional. Applicant alleged that the 1975 value plus the 2 percent factoring provision of California Constitution Article XIIIA (Proposition 13) should be utilized rather than the transfer date of February 9, 1978; that to

do otherwise denies equal protection under both the Federal and State Constitutions, plus Proposition 13 is an expost facto law and, as such, is invalid under both Federal and State Constitutions.

2. Burglary. Valuable items consisting of chandeliers, venetian blinds and a window shade were stolen from the house several days after the close of escrow. The applicant requested enrollment of the 1975 value and reduction to recognize the theft.

All proferred evidence having been received and duly considered, the Ventura County Board of Equalization makes the following findings of fact and decision:

1. The property had a change of ownership on February 9, 1978.

2. The purchase price of $126,000 was the value of the property on February 9, 1978.

3. Under the provisions of California Constitution Article XIIIA, section 2(a), the Ventura County Assessor properly enrolled the value of the property as of the date of the change of ownership.

4. The Board of Equalization does not have the jurisdiction to rule upon the constitutionality of Proposition 13.

5. The burglary occurred after February 9, 1978 and, therefore, does not affect the enrolled value.

COUNTY OF VENTURA
ASSESSMENT ROLL CHANGES (ARC)

SECURED PROPERTY

Page 1 of 1

ARC - APPLICATION NO.
AA19 78 10591

TRA	APN
09006	635-0-121-240

INCREASE
DECREASE

Initiated by:
ASSESSOR [X]
AUDITOR
TAX COLLECTOR

VALUE [X]
CHANGE
NAME
CANCEL
CHANGE

ESCAPED
REFUND
OLD ARC N

BATCH	DOC	SOURCE DOC	TRANS	ROLL YEAR
-		0013	04	19- 78-79

DATE DOCUMENT _____ MAILED _____
ENTERED _____

VENTURA COUNTY BOARD OF EQUALIZATION

IN THE MATTER OF THE APPLICATION OF

DAUTREMONT, JOSEPH L., JR. - D. A.

FINDING SHEET – VALUE ALLOCATION

Pursuant to Section 1610.8 of the Revenue and Taxation Code, the Board OF Equalization made the determination of full cash value as set forth on the attached sheet which value is composed of the following value allocations:

	ENDORSER'S USE ONLY	ENROLLED FULL CASH VALUE	ENROLLED ASSESSED VALUE	FULL CASH VALUE PER FINDING	ASSESSED VALUE PER FINDING
LAND VALUE 0804		10500	2625	10500	2625
IMPR. STR. VALUE 0805					

TREES/VINES	AB07					
TRADE FIXTURES - 1 SEC. ACCUMULATIVE	AB11					
TRADE FIXTURES - 2 UNIT APPRAISAL	AB12					
INVENTORY	AB13					
BUS. P.P. - 1 SEC. ACCUMULATIVE	AB08					
BUS. P.P. 2 UNIT APPRAISAL	AB09					
BUS. P.P. - 3 AGRI. ACCUMULATIVE	AB10					
EXEMPTIONS	AB31		7000	1750	7000	1750
PENALTY (PERCENTAGE)	AC11					

Value determination and allocations made and approved this 26th day of March 19 79

VENTURA COUNTY BOARD OF EQUALIZATION

by Linda L. Rauhecker

DECISION

The assessment placed on the property by the Assessor is sustained by the Board of Equalization.

Executed this 28th day of March, 1979.

VENTURA COUNTY BOARD OF EQUALIZATION

By:

THOMAS E. LAUBACHER, Chairman

ATTEST:

ROBERT L. HAMM, County Clerk,
County of Ventura, State of California, and ex officio Clerk of
the Ventura County Board of
Equalization.
By:
ROBERTA RODRIGUEZ
Deputy Clerk

NOTICE:

Any request for a transcript to the proceedings in this matter must be delivered in writing to the Clerk of the Board of Equalization no later than May 28, 1979. Request for transcript must be accompanied by the appropriate fee as determined by the Clerk of the Board of Equalization.

APPLICATION FOR CHANGED ASSES[illegible]

(THIS APPLICATION MUST BE FILED ON OR BEFORE [illegible])

APPLICATION NUMBER 1009

PG 1 OF [illegible]

VENTURA COUNTY BOARD OF EQUALIZATION

800 SOUTH VICTORIA AVENUE, VENTURA, CALIFORNIA, 93009 - PHONE (805) 654-2252

READ NOTICES ON BACK OF APPLICATION

APPLICANT MUST COMPLETE APPLICABLE ITEMS 1 - 17 OR APPEAL MAY BE DENIED

1. PARCEL NO./ACCOUNT NO.	2. NAME OF OWNER ON CURRENT ROLL	3. CURRENT USE OF PROPERTY
635-0-121-240	Dautremont Joseph L.Jr - D A	dwelling

4. TRA	5. MAIL NOTICES TO THIS ADDRESS	6. LOCATION OF PROPERTY
NAME	J.L. Dautremont Jr.	28 Taxco Court
STREET ADDRESS	28 Taxco Court	Simi Valley, CA 93065
CITY, STATE, ZIP CODE	Simi Valley, CA 93065	

7. APPLICANT'S PHONES	BUSINESS	HOME
	527-9161	527-9161

VALUES	9. CURRENT ASSESSMENT ON ROLL*	10. ASSESSOR'S FULL VALUE	11. APPLICANT'S OPINION OF FULL VALUE
REAL PROPERTY			
Land	$ 2677.50	$ 10,710	$ 9741.90
Improvement Structures	$ 29,452.50	$ 117,810	$44,080.94
Improvement Fixtures	$	$	$
Improvement Trees	$	$	$
Sub-Total	$32130	$ 128520	$53822.84
PERSONALTY			
Inventory	$	$	$
Personalty Other	$	$	$
Sub-Total	$	$	$
EXEMPTIONS			
Homeowners	$	$	$

8. DESIGNATION OF AGENT

LAST FIRST MIDDLE INITIAL

MAILING ADDRESS STREET

CITY STATE ZIP

HOME PHONE BUSINESS PHONE

12. AUTHORIZATION: IF THE APPLICANT IS A CORPORATION THE AGENT'S AUTHORIZATION MUST BE SIGNED BY AN OFFICER OF THE CORPORATION. IF THE AGENT IS NOT AN ATTORNEY LICENSED IN CALIFORNIA OR A SPOUSE CHILD OR PARENT OF THE PERSON AFFECTED, THE FOLLOWING MUST BE COMPLETED.

IS HEREBY AUTHORIZED TO ACT AS MY AGENT IN THIS APPLICATION.

19[illegible]

APPLICATION FOR CHANGED ASSESSMENT

1. Parcel 635-0-121-240
2. Current owner Dautremont

Item 13.

1. Building damaged, demolished or incomplete March 1.
   Loss and damage due to burglary: $4087.28

3 large ornate crystal chandeliers	$3755.00
3 venetian blinds	263.18
1 window shade	69.10
	$4087.28

2. Assessor's 1975 value and yearly increase are incorrect.

Year	Total cash value
1975-76	53500.
1976-77 (increased 2% according to Prop. 13)	54570.
1977-78(increased 2% according to Prop. 13)	55661.40
1978-79(increased 2% according to Prop. 13)	56774.63
1979-80(increased 2% according to Prop. 13)	57910.12

BOARD OF EQUALIZATION
STATE OF CALIFORNIA
COUNTY OF VENTURA

DATE: DECEMBER 10, 1979

TIME: 8:30 a. m.

BOARD MEMBERS:

(X) David D. Eaton

(X) James Dougherty

(X) Edwin A. Jones

(X) Thomas E. Laubacher

(X) J. K. (Ken) MacDonald

APPLICATION NO. 10099
PARCEL NO. 635-0-121-240
OWNER'S NAME
J. L. DAUTREMONT, JR.

ASSESSOR'S REPRESENTATIVES
(X) JERRY SANFORD
COUNSEL FOR THE BOARD
(X) SHANNON TROWER
COUNSEL FOR THE APPLICANT

THIS IS THE TIME SET FOR HEARING WITH THE BOARD OF EQUALIZATION ON THE ABOVE MATTER.

( ) This matter is continued for hearing from .

ON PROOF MADE TO THE SATISFACTION OF THE BOARD, THE BOARD FINDS:

(X) Notice of hearing was duly given by Clerk as required by law.

(X) The applicant is present.

( ) That neither the applicant nor his agent is present, and upon the motion of , seconded by the application is denied for lack of appearance.

THE NATURE OF THE APPLICATION, THE ASSESSED VALUE AS IT APPEARS ON THE LOCAL ROLL AND THE APPLICANT'S OPINION OF THE FULL CASH VALUE OF THE PROPERTY ARE GIVEN: THEREUPON, THE CHAIRMAN ASCERTAINS THE ASSESSOR'S RECOMMENDATION.

THE BOARD NOW HEARS THE APPLICANT'S AND THE ASSESSOR'S PRESENTATIONS.

(X) The applicant was sworn and testifies.

(X) The Assessor's representatives are sworn, remain sworn from previous hearing, and testify.

(X) Finding of fact are requested by (X) applicant, ( ) Assessor.

THE MATTER IS NOW DULY SUBMITTED TO THE BOARD AND IT IS ADJUDGED:

(X) Upon motion of Supervisor Eaton, seconded by MacDonald the Board of Equalization determines the full cash value of the property, which is the subject of this hearing, to be as stated on the attached finding of value sheet.

( ) Takes the matter under submission.

( ) Continues the matter to:

( ) Makes its determination as follows:

( ) Exhibits received as follows:

COPIES TO:
Applicant
Assessor
Auditor-Controller
Tax Collector
Files (2)
Item 1
12/10/79

BOARD OF EQUALIZATION

COUNTY OF VENTURA, STATE OF CALIFORNIA

FINDING OF FACT
AND
DECISION

1979 Assessment

Application No. 10099

Applicant: J. L. DAUTREMONT, JR.

Before the Board of Equalization consisting of Ventura County Supervisors David Eaton, J. K. "Ken" MacDonald, James Dougherty, Edwin Jones, and, as Chairman, Thomas E. Laubacher, the hearing on the above application was heard on December 10, 1979. The Assessor was represented by Jerry Sanford, and the applicant was represented by Dolores Dautremont.

The applicant based the protest on two points:

1. Constitutional. Applicant alleged that Article XIIIA of the California Constitution denied equal protection under the law by a law passed after the fact in that persons purchasing property after the effective date of the amendment to the article were doing so with full knowledge of the tax consequences, but that persons buying be-

tween March 1, 1975 and the effective date of the Constitution were penalized by that constitutional article. Having purchased her property on March 9, 1978, applicant alleged denial of equal protection.

2. Burglary. Valuable items consisting of chandeliers, venetian blinds and draperies, of an alleged aggregate value in excess of $4,000.00, were stolen from the house several days after the close of escrow. It is applicant's contention that the assessment should not include property which no longer existed.

Applicant appealed the 1978 assessment and the Board of Equalization found that it did not have jurisdiction to rule upon the constitutionality of Proposition 13, that, under the applicable law at that time, it had to look at the value of the property on the date of sale, and that it could not give a deduction for subsequently stolen property.

Because of applicant's stolen property and alleged diminution in value, the Ventura County Assessor, under the provisions of Proposition 8, reappraised the property on March 1, 1979, and it was the opinion of the Assessor that, because of increase in market values since the sale to applicant, the assessment of $128,516.00 was valid.

All proffered evidence having been received and duly considered, the Ventura County Board of Equalization makes the following findings of fact and decision:

1. The Board of Equalization does not have the jurisdiction to rule upon the constitutionality of Article XIIIA of the California Constitution.

2. Applicant presented no evidence of value other than the 1978 sale of the subject property.

3. Applying Proposition 8, the assessment of $128,516.00 was a correct value as of March 1, 1979.

DECISION

The assessment placed on the property by the Assessor is sustained by the Board of Equalization.

Executed this 18th day of December, 1979.

VENTURA COUNTY BOARD OF EQUALIZATION

By Thomas E. Laubacher

THOMAS E. LAUBACHER, Chairman

ATTEST:

ROBERT L. HAMM, County Clerk
County of Ventura, State of California, and ex officio Clerk of the Ventura County Board of Equalization.
By: ROBERTA RODRIGUEZ
Deputy Clerk

NOTICE:

Any request for a transcript of the proceedings in this matter must be delivered in writing to the Clerk of the Board of Equalization no later than February 18, 1980. Request for transcript must be accompanied by the appropriate fee as determined by the Clerk of the Board of Equalization.

2nd Civil No. 65479

IN THE SUPREME COURT

FOR THE STATE OF CALIFORNIA

JOSEPH L. DAUTREMONT, JR. and
DELORES A. DAUTREMONT,
Appellants,

vs.

COUNTY OF VENTURA, a Body Corporate and Politic,
Respondents.

APPELLANT'S PETITION FOR HEARING

Appeal From
Superior Court of Ventura County
Honorable Marvin H. Lewis, Judge

FRANK ANTON GUNDERSON
2239 Townsgate Road
Suite 202
Westlake Village, CA 91361
(805) 496-6567

Attorney for Appellants

Other	$ 1750	$ 1750	$ 1750
Sub Total	$	$	$
NET TOTALS	$	$	$

SIGNATURE OF APPLICANT

THE SINGLE FACT THAT YOUR TAXES OR VALUE INCREASED WILL NOT SUPPORT THIS APPEAL AND WILL RESULT IN DENIAL.

13. The facts that I rely upon to support the requested change in value are as follows:

a. ☐ The taxable value, including inflationary adjustment, exceeds the full value of the property
b. ☒ Assessor's base year and/or base year value determination is incorrect
c. ☐ Property damaged by misfortune or calamity on March 1
d. ☐ Assessor's value of personal property has been incorrectly calculated (trade level, classification, etc.)
e. ☐ Penal assessment not justified
f. ☐ Allocation of exempt value is incorrect
g. ☒ Other (attach explanation)

See attached sheet

14. A list of property transfers within the county which have occurred within the preceding two year period is open to inspection at the Assessor's office to the applicant upon payment of a fee of $10.00 and presentation of a filed copy of this application. (Not applicable for counties under 50,000 population.)

15. Is the subject property an owner-occupied single family residence? Yes ☒ No ☐
HEARING OFFICERS: If the total market value of the property does not exceed $100,000 or the property is a single family dwelling, condominium or cooperative, of a multiple family dwelling of four units or less, you may request that your hearing be conducted by an assessment hearing officer.
A HEARING OFFICER ☐ IS ☒ IS NOT REQUESTED.

16. Written Findings of Fact will be made available at $10.00 per parcel, but are only necessary if the applicant intends to seek judicial review of an adverse board decision. If so, a transcript is also necessary and a separate request therefor must be made to the clerk. A notice of the board's decision will automatically be sent to applicant at no cost. ☒ Findings of Fact are requested.

17. I HEREBY DECLARE UNDER PENALTY OF PERJURY THAT THIS APPLICATION (INCLUDING ANY ACCOMPANYING STATEMENTS) HAS BEEN EXAMINED BY ME AND TO THE BEST OF MY KNOWLEDGE AND BELIEF IS TRUE, CORRECT AND COMPLETE.

Oct. 2, 1979 — Gilbert Tantremont
DATE — SIGNATURE OF APPLICANT (OWNER OR AGENT)

EXECUTED AT City Simi Valley County Ventura State California

If executed out of California, shall be sworn to before a Notary Public.

18. Roberta Rodriguez — 9/27/79
CLERK RECEIVING APPLICATION — DATE APPLICATION RECEIVED

FOR BOARD OF EQUALIZATION USE ONLY

HEARING NOTICE

Your Board of Equalization hearing is set for Monday December 10, 79 at 8:30 a.m. in the Board of Supervisors Hearing Room, Ventura County Administration Building, 800 South Victoria Avenue, Ventura, California 93009.

The Board is required to find the full cash value of the property from the evidence presented at the hearing. This finding may grant the reduction request, or may exceed the full cash value as determined by the Assessor with the result that the assessment will be raised rather than lowered.

The applicant shall appear personally at the hearing on the matter, although he may have an agent make the presentation, unless at the time set for the hearing, the applicant is either absent from the County or by reason of health is unable to appear.

NON-APPEARANCE WILL RESULT IN DENIAL OF APPLICATION

If you desire to withdraw the application, please notify us promptly so the time may be assigned to others. CALL 654-2151

ROBERT L. HARRIS
CLERK OF THE BOARD

TRA	APN	INCREASE	DECREASE	VALUE CHANGE	NAME	CANCEL CHANGE	BD ACTION
09006	635-0-121-260						REFUND OLD ASS'N

Initiated by: ASSESSOR ☒ AUDITOR TAX COLLECTOR

BATCH	DOC	SOURCE DOC	TRANS	ROLL YEAR
	-	0013	04	19 79/80

DOCUMENT ENTERED _____ MAILED _____

VENTURA COUNTY BOARD OF EQUALIZATION

IN THE MATTER OF THE APPLICATION OF

DAUPHINOT, JOSEPH L., JR. - D. A.

FINDING SHEET – VALUE ALLOCATION

Pursuant to Section 1610.8 of the Revenue and Taxation Code, the Board OF Equalization made the determination of full cash value as set forth on the attached sheet which value is composed of the following value allocations:

	ASSESSOR'S USE ONLY	ENROLLED FULL CASH VALUE	ENROLLED ASSESSED VALUE	FULL CASH VALUE PER FINDING	ASSESSED VALUE PER FINDING
LAND VALUE ABOVE		10700	2677	10700	2677
IMPR. SITE VALUE ABOVE					
IMPR. VALUE ABOVE		11780		11780	2952

TRADE FIXTURES - 1 SEC. ACCUMULATIVE	AB11					
TRADE FIXTURES - 2 UNIT APPRAISAL	AB12					
INVENTORY	AB13					
BUS. P.P. - 1 SEC. ACCUMULATIVE	AB06					
BUS. P.P. 2 UNIT APPRAISAL	AB08					
BUS. P.P. - 1 AGRI. ACCUMULATIVE	AB10					
EXEMPTIONS	AB31		7000	1750	7000	1750
PENALTY (PERCENTAGE)	AC11					

Value determinations and allowances made and approved this 10th day of Dec., 19 79

VENTURA COUNTY BOARD OF EQUALIZATION

Marian E. Faulkner

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2nd Civil No. 65479

IN THE SUPREME COURT

FOR THE STATE OF CALIFORNIA

JOSEPH L. DAUTREMONT, JR. and
DELORES A. DAUTREMONT,

Appellants,

vs.

COUNTY OF VENTURA, a Body Corporate
and Politic,

Respondents.

TO THE HONORABLE CHIEF JUSTICE OF CALIFORNIA AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA:

Appellants, Joseph L. Dautremont, Jr., and Delores A. Dautremont, respectfully petition for hearing following the decision of the Court of Appeal, Second Appellate District, Division Six (per Stone, P.J.), filed June 23, 1983.

Hearing is necessary to secure uniformity of decision and to settle an important question of law:

Does Article XIIIA of the California Constitution create a class of taxpayer which is denied Equal Protection under the Fourteenth Amendment to the United States Constitution?

STATEMENT OF FACTS

Appellants purchased a single family residence in the City of Simi Valley on February 9, 1978. On June 6 of that year the People adopted Proposition 13 which added Article XIIIA to the California Constitution.

Despite the avowed purposes of the proposition according to its proponents, Article XIIIA has unfairly created two classes of taxpayer who pay markedly differing taxes on substantially identical properties. These classes are indistinguishable but for the time at which they acquired title to their property and the proportion of their properties' fair market value which they pay to the Tax Collector.

Appellants have adhered to the prescribed method of appealing this unequal taxation, appearing before the Board of Equalization [Cl Tr, pgs 6, 9, 11, 27, 33, 34], and subsequently filing suit, first in Small Claims division of the Ventura County Municipal Court, then in the Superior Court of Los Angeles County. On stipulation of all parties, the case was transferred to Ventura County and tried to the Court before the Honorable Marvin H. Lewis. Judgment was rendered for Defendant, County of Ventura on January 14, 1982 [Cl Tr, pgs 146, 147]. Appeal was taken to the Court of Appeal, Second Appellate District, wherein the judgment of the Superior Court was affirmed by opinion filed June 23, 1983 [Appendix 1].

The presently well-known effect of Article XIIIA, section 2(a), was to limit the value of real property in this State for taxation purposes to that value shown on the 1975-76 tax bill, or thereafter to the appraised value when purchased or newly constructed [Cl Tr, pgs 112, 113].

Upon receipt of their tax bills for tax years 1978-79 and 1979-80, Appellants timely filed Applications for Changed Assessment [Cl Tr, pgs 6, 9]. These applications were made, so far as is relevant here, on grounds of unequal protection. The full cash value of Appellants' residence, based upon the 1975-76 tax bill, and increased by 2% per year, was $56,774.63 and $57,910.12 for the 1978-79 and 1979-80 tax years, respectively [Cl Tr, pg 11].

Decisions of the Board of Equalization for Ventura County were rendered as to both applications, disclaiming jurisdiction over the constitutional question [Cl Tr, pgs 27, 33]. The Board also found the value of Appellants' property, pursuant to section 2(a) of Article XIIIA and the sale price in 1978, to be $126,000.00 and $128,516.00 for tax years 1978-79 and 1979-80 respectively [Cl Tr, pgs 27, 34].

Appellants first sought judicial review of their contentions in Small Claims department of the Ventura County Municipal Court. Subsequently, suit was filed in Los Angeles County Superior Court, the nearest court having a full time Attorney General's office. By stipulation of the parties, the case was transferred to Ventura County Superior Court.

Basing its decision on the case of **Amador Valley Joint Union High School District vs. State Board of Equalization** (1978) 22 Cal 3d 208, the trial court, on January 14, 1982, rendered judgment for the County of Ventura [Cl Tr, pgs 146, 147]. Notice of appeal was filed on January 29, 1982.

By opinion filed June 23, 1983 [per Stone, P.J.] also relying on **Amador Valley**, etc, supra, the Court of Appeal, Second District, affirmed.

QUESTIONS PRESENTED

The appellate court chose, as well it might, not to extensively treat the basic constitutional challenge, simply citing **Amador Valley** as controlling. That basic question is herein raised again. The Court of Appeals did speak to the issues raised by Appellants' contentions that (1) **Amador Valley** did not closely examine section 2(a) of Article XIIIA and is therefore distinguishable; (2) that the "Grandfather Clause" rationale of **Amador Valley** is not sufficient to justify an arbitrary rollback date; and (3) that Article XIIIA section 2(a) as it is applied to Appellants is in conflict with Article XIII section 1 which provides that all property shall be taxed in proportion to its full value [Opinion of Court of Appeals, Second District, 2nd Civil No. 65479, pg 4, attached hereto as Appendix 1]. These issues, as well as the questions of uniformity of decision and equal protection, are herein raised again.

ARGUMENT

I

THE POWER OF THE STATE TO MAKE CLASSIFICATIONS IN FURTHERANCE OF ITS POWER TO TAX IS LIMITED BY THE FEDERAL CONSTITUTION

It is a basic tenet of our law that "[t]he Fourteenth Amendment forbids the states to deny to any person within their jurisdiction the equal protection of the laws". **Western Southern Life Insurance Company v. State Board of Equalization** (1981) 451 U.S. 648, 656-657, 101 S. Ct. 2070, 68 L.Ed 2d 514, 523. Where, as here, "taxation is concerned and no specific federal right, apart from Equal Protection, is imperiled, the states have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation. A state tax law is not arbitrary, although it discriminates in favor of a certain class if the discrimination is founded upon a reasonable distinction, or difference in state policy not in conflict with the federal Constitution." **Kahn v. Shevin**[1] (1974) 416 U.S. 351, 355-356, 94 S. Ct. 1734, 40 L. Ed 2d 189.

Since Equal Protection is the gravamen of Appellants' contentions, it follows that the "leeway" allowed the state

1. In Appellants' Opening Brief filed with the Court of Appeal, it was erroneously stated that the court in **Kahn v. Shevin** overturned the taxing scheme.

in this case is something less than that "large leeway" articulated in **Kahn v. Shevin**. Article XIIIA has created two classes of taxpayer - one which took title before the 1975-76 assessment date, and whose assessment is frozen at that arbitrary point in time regardless of purchase date, regardless of acquisition value, and regardless of the property's change in value, and a second class which pays a tax based upon the full market value at some later point in time. Appellants, members of this second class, pay tax based upon a purchase price of $126,000.00. Had the "rollback" provision of Article XIIIA been applied to Appellants' residence, the tax would have been based upon a taxable value of $56,774.63 for 1978-79. Thus Appellants, who pay at the same tax rate as others, can be seen to be paying more than twice the tax they would have paid had their residence been valued as those of home-owners who took title a mere two years earlier. This is not equal treatment under the law, and no distinction between these classes has even been articulated. "The Equal Protection clause of the Fourteenth Amendment protects the individual from state action which selects him out for discriminatory treatment by subjecting him to taxes not imposed on others of the class." **Hillsborough v. Cromwell** (1946) 326 U.S. 620, 623, 66 S. Ct 445, 90 L. Ed 358.

II

CLASSIFICATIONS, WHERE EQUAL PROTECTION IS IMPERILED, MUST BEAR AN IDENTIFIABLE AND REASONABLE RELATION TO THE OBJECT OF THE LEGISLATION

Classifications of taxpayers "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike". **Royster Guano Co. v. Virginia** (1920) 253 U.S. 412, 415, 40 S. Ct. 560, 64 L. Ed 989. In the instant case, the only distinction between these classes of taxpayers is the date of acquisition. Beyond that insignificant quirk of fate, over which members of Appellants' class have no control, all homeowners in this class are indistinguishable, for tax purposes, from homeowners in the favored class.

"When, as here, the enactment follows voter approval, the ballot summary and arguments and analysis presented to the electorate in connection with a particular measure may be helpful in determining the probable meaning of uncertain language." **State Board of Equalization v. Board of Supervisors**(1980) 105 Cal App 3d 813, 821. "A complete reading of the voter's pamphlet fails to reveal how the electorate intended to relinquish the established constitutional guaranty providing for taxation on fair market value. They merely voted to limit the increase in

the value under certain stated circumstances. Article XIII, section 1, and 129 years of an historical constitutional principle were left unchanged by the express language of 13". **State Board of Equalization**, supra, at 821-822.

If, as succinctly stated in **State Board**, etc., supra, the purpose of Proposition 13 was to limit the increase in value, that purpose and effect should have been extended to all members of the class or classes created or affected "As long as the classificatory scheme - - - - rationally advances a reasonable and identifiable government objective we must disregard the existence of other methods of allocations that we, as individual, perhaps would have preferred." **Schwerken v. Wilson**(1981) 450 U.S. 221, 101 S. Ct. 1074, 1083, 67 L. Ed 2d 186.

If the purpose of Proposition 13 was to limit increase in value for taxation purposes, it is respectfully submitted that to exclude a large and growing class from that limitation is not a reasonable government objective. If the purpose of that enactment was to change the valuation to an "acquisition value" basis, it is respectfully submitted that such a purpose is also unreasonable in light of the protections afforded by the Equal Protection clause of the Fourteenth Amendment.

III

THE CLASSIFICATION SCHEME OF ARTICLE XIIIA BEARS NO REASONABLE RELATION TO ANY ARTICULATED OBJECT OF THE ENACTMENT

This Honorable Court in **Amador Valley** spoke of a change to "acquisition value" in taxing property. Not only is there absolutely no such phrase in the documents provided the electorate, but the appellate court in **State Board**, etc, supra, has expressed the opinion that Article XIII, requiring taxation of real property to be based on fair market value, is expressly unchanged. More to the point, the classification of taxpayers resulting from Article XIIIA serves neither goal. There can be no demonstrable relation between the 1975-76 tax assessment value and an "acquisition value" which occurred transitorily perhaps many years earlier. Neither can there be any demonstrable relation between the 1975-76 assessment value and today's "fair market value", or even that of 1975-76.

If the voters intended merely to "limit the increase in value", as stated in **Board of Equalization**, supra, that goal is easily, and fairly, reached by "freezing" all assessed values at those of 1975-76. For whatever unstated reason, the drafters of Proposition 13 made it possible to exact a much greater tax on newcomers and future generations.

The most charitable thing that can be said about this enactment is that it fails to classify taxpayers in a manner reasonably calculated to further a permissible objective. Further, while ostensibly intended to leave Article XIII unchanged, the classification scheme of Article XIIIA is in actuality in complete derogation of that preceding Article. "A discriminatory tax law cannot be sustained - - - - if the classification appears to be altogether illusory." **Royster Guano**, supra, at 415-416. "The state is not at liberty to resort to a classification that is palpable or arbitrary." **Ohio Oil Co. v. Conway**(1930) 281 U.S. 160.

This Court, in **United States Steel Corp. v. Public Utilities Commission**(1981) 29 Cal 3d 603, 611-612 quoted Justice Robert Jackson in **Railway Express v. New York**(1949) 336 U.S. 106, 112-113, as follows: "I regard it as a salutary doctrine that cities, states and the Federal Government must exercise their power so as not to discriminate between their inhabitants except upon some reasonable differentiation fairly related to the object of regulation. - - - - [T]here is no more effective practical quaranty against arbitrary and unreasonable government than to require that the principles of law which officials would impose upon a minority must be imposed generally." At the time of voting on Proposition 13 the vast majority of voters who owned homes had purchased them prior to the 1975-76 assessment valuation date. If it be

fair to impose a tax on Appellants which is more than double that of their neighbor who bought a scant two years earlier, then the words of Justice Jackson ring hollow indeed.

The United States Supreme Court in **Schwerken v. Wilson**(1981) 450 U.S. 221, 101 S. Ct. 1074, 1083, 67 L. Ed 2d 186, stated: "As long as the classificatory scheme chosen by Congress **rationally advances a reasonable and identifiable government objective** we must disregard the existence of other methods of allocation that we, as individuals, perhaps would have preferred" (emphasis added). It would thus appear that the classification scheme of Article XIIIA must bear a reasonable relation to an objective that is **identifiable and reasonable.** Not only is there difficulty in identifying the precise objectives of Article XIIIA, but it seems doubtful that any objective yet propounded can fairly be termed reasonable in view of the patent disparity in treatment of these classes of taxpayer.

IV

THE CLASSIFICATION SCHEME OF ARTICLE XIIIA CREATES AN IMPERMISSIBLE AND LARGE CLASS OF UNDERVALUED PROPERTY

"An intentional undervaluation of a large class of property when the law enjoins assessment at true value is

necessarily designed to operate unequally upon other classes of property." **Greene v. Louisville and Interurban R.R. Co.**(1917) 244 U.S. 499, 518, 37 S. Ct. 673, 61 L. Ed 1280. [And] "it must be regarded as settled that intentional systematic undervaluation - - - - of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property." **Cumberland Coal Co. v. Board**(1931) 284 U.S. 23, 28, 52 S. Ct. 48, 76 L. Ed 146; **Sioux City Bridge v. Dakota County**(1923) 260 U.S. 441, 445, 43 S. Ct. 190, 67 L. Ed 340.

Article XIIIA when first implemented taxed property owned prior to March 1, 1975 at less than full value on the date of implementation, and taxed property acquired after March 1, 1975 at acquisition value. Appellants, having bought in February, 1978, were taxed at the property's full value in 1978, while those acquiring similar property before March 1, 1975 were taxed on a much lower proportion of full market value. This amounts to a systematic and intentional undervaluation of a large portion of taxable property in the state, which is repugnant to Equal Protection, and as such must be declared invalid.

V

THE GRANDFATHER CLAUSE IS NOT APPLICABLE TO THE CLASSIFICATION SCHEME OF ARTICLE XIIIA

"While Grandfather Clauses have been upheld in a variety of statutes, legislation that favors existing business must have a reasonable relation to the public interest. Where a Grandfather Clause does not appear to relate to the public interest the Statute may offend constitutional protection against arbitrary classification." **United States Steel Corp. v. Public Utilities Commission** (1981) 29 Cal 3d 603, 612-613. "Creating a Grandfather Clause creates a current and undesirable nonuniformity in the legislative scheme of regulation, and perpetuation of thereof - - - - would defeat the ultimate legislative objective." **Harris v. Alcoholic Beverage Appeals Board**(1964) 61 Cal 2d 305, 309.

Article XIIIA has created an analog to the Grandfather Clause; but without the required permissible public purpose. This archaic doctrine is generally used to avoid inequities in imposing new regulations on existing businesses and occupations. It was used in **Amador Valley** as a rationale for the classifications herein complained of. Where is the equity, however, of imposing upon a small

minority of homeowners a greatly increased tax burden relative to that of their neighbors? And what can be the "public purpose", if any there be, pass muster under the "reasonable and identifiable" test articulated in **Schwerken**, supra? There can be no equity in Article XIIIA's tyranny of the majority, and it is respectfully submitted that there is no permissible public purpose to be found in this unequal impost.

VI

"AMADOR VALLEY" DID NOT CONSTITUTE THE LEVEL OF REVIEW OF THIS CLASSIFICATION TO WHICH APPELLANTS ARE ENTITLED

"Minimal scrutiny requires the court to conduct a serious and genuine judicial inquiry into the correspondence between the classification and the goals." **Cooper v. Bray**(1978) 21 Cal 3d 841, 848. Those who took title prior to the 1975-76 assessment constitute a large closed class. No one, including Appellants, can join that class. Absent a valid reason for establishment of this favored class, the classification scheme must fall. Where Equal Protection is at issue the review must be more rigorous than cursory. The Court in **Amador Valley** seemed to extend an invitation to further scrutiny. Having accepted that perceived invitation, Appellants now request a more

leisurely, serious, and genuine review of this classificatory scheme in the light of Equal Protection.

CONCLUSION

For the reasons herein stated, Appellants respectfully pray judgment of the lower court be reversed, and this case remanded for further proceedings in the Superior Court.

Dated: July 8, 1983

Respectfully submitted,

Frank Anton Gunderson
Attorney for Appellants

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT

DIVISION SIX

FILED
Court of Appeal
Second District
June 23, 1983
Clay Robbins, Jr., Clerk

JOSEPH L. DAUTREMONT, JR., et al.,
Plaintiffs and Appellants,

v.

2d Civil No. 65479

COUNTY OF VENTURA,
Defendant and Respondent.

(Ventura County Super. Ct. No. 72963)

Appellants Dautremont raise the sole issue of whether Article XIIIA, section 2(a) of the California Constitution, which requires that property be valued for purposes of property taxation based upon its value at time of acquisition, violates equal protection under the law in that it results in disparate tax treatment between owners of similar properties. The trial court gave judgment for defendant County of Ventura. We affirm.

STATEMENT OF FACTS

Appellants purchased their single family residence in the City of Simi Valley, County of Ventura, on February 9, 1978. On June 6, 1978, the people of the State of California adopted the initiative measure known as Proposition 13 adding Article XIIIA to the California Constitution. Section 2(a) of Article XIIIA provides that "the full cash value (to which the 1 percent maximum tax applies) means the County Assessor's valuation of real property as shown on the 1975-76 tax bill under 'full cash value' or, thereafter, the appraised value of real property when purchased, newly constructed, or a change of ownership has occurred after the 1975 assessment."

Pursuant to the mandate of Article XIIIA, the Ventura County assessor appraised appellants' real property for the 1978-79 tax year based upon its value at time of acquisition, i.e., the purchase price of $126,000.

Subsequent to receipt of their tax bills for tax years 1978-1979 and 1979-1980, appellants timely filed Application for Changed Assessments on the grounds, so far as is relevant to this appeal, that Article XIIIA denied them equal protection under both federal and state Constitutions. Appellants testified before the Board of Equalization that the full cash value of their residence, based upon the 1975-1976 tax bill, and increased by 2 percent per year, was $56,774.63 and $57,910.12 for the 1978-1979 and 1979-1980 tax years respectively. Appell-

ants' calculations were based upon the full cash value for their property as reflected in the 1975-76 tax rolls increased pursuant to Article XIIIA, section 2(b). Section 2(b) provides: "The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction, . . . " Appellants' contention was that their property should be taxed at the 1975 value rather than the 1978 value of acquisition.

The Board of Equalization denied appellants' applications for both tax years 1978-1979 and 1979-1980 on the grounds that the constitutionality of the law was not within the board's jurisdiction. The board sustained the property value as enrolled by the assessor.

Appellants filed suit in small claims court. Said suit was transferred to superior court pursuant to Code of Civil Procedure section 396. Trial was held December 21, 1981. The trial court, sitting without a jury, rendered judgment for defendant on January 14, 1982. This appeal followed.

ISSUE

Appellants contend that Article XIIIA of the Constitution of the State of California deprives them of equal protection under the law, as guaranteed them by the Con-

stitution of the State of California and the United States, in that it imposes upon them a tax greatly in excess of that imposed upon similar properties.

DISCUSSION

The trial court based its ruling on the case of **Amador Valley Joint Union High School District v. State Board of Equalization** (1978) 22 Cal.3d 208, which addressed the equal protection challenge. Appellants, however, contend that (1) **Amador Valley** did not closely examine section 2(a) of Article XIIIA and is therefore distinguishable, (2) that the "grandfather clause" rationale of **Amador Valley** is not able to justify an arbitrary roll back date and (3) that Article XIIIA section 2(a) as it is applied to appellants is in conflict with Article XIII section 1 which provides that all property shall be taxed in proportion to its full value.

In **Amador Valley Joint Union High School District v. State Board of Equalization**, cited **supra**, petitioners therein contended that, by reason of the "roll back" of assessed value to the 1975-1976 fiscal years, two substantially identical homes, located "side by side" and receiving identical governmental services, could be assessed and taxed at different levels depending upon their date of acquisition and that such a disparity in tax treatment constitutes an arbitrary discrimination in violation of the federal equal protection clause. (Amend. XIV

§1.) The California Supreme Court, noting that although arguably premature, stated "[N]evertheless, we have elected to treat the equal protection issue as constituting an attack upon the face of the article itself, because the assessors throughout this state must be advised whether to follow the new assessment procedure. As will appear, we will conclude that the essential demands of equal protection are satisfied by a rational basis underlying section 2 of the new article." (22 Cal. 3d at p 233.)

The rational basis, the court explained, is the theory that the annual taxes that a property owner must pay should bear some rational relationship to the original cost of the property, predicated on the owner's free and voluntary act of purchase rather than relate to an unforeseen, perhaps unduly inflated, current value. The Supreme Court found that there is no legal requirement that property of equal current value be taxed equally, and that a tax law discriminates against a certain class does not make it arbitrary if the discrimination is founded upon a reasonable distinction, or difference in state policy, not in conflict with the federal Constitution.

Appellants herein contend that the prior analysis of Article XIIIA was not a serious and genuine review of the equal protection issue as to appellants and should not be viewed as controlling. We find this argument without merit. The Supreme Court in **Amador Valley** specifically addressed the same argument made by appellants herein that the intentional, systematic **under-valuation** of prop-

erty similarly situated with other property assessed at its full value constitutes an improper discrimination in violation of equal protection principles. Much of the authority to which appellants refer for this proposition was cited by petitioners in **Amador Valley**. The court therein stated that section 2 does not unduly discriminate against persons who acquired their property after 1975 "for those persons are assessed and taxed in precisely the same manner as those who purchased in 1975, namely, on an acquisition value basis predicted on the owner's free and voluntary acts of purchase. This is an arguably reasonable basis for assessment." (22 Cal. 3d at p 235.)

Appellants contend that the rationale of a grandfather's clause (to prevent existing business from suffering from increased regulation) does not automatically apply to the roll back of property valuation as applied to private residences. The Supreme Court, however, said only that "[t]he selection of the 1975-1976 fiscal year as a base year, although seemingly arbitrary, may be considered as comparable to utilization of a "grandfather clause" wherein a particular year is chosen as the effective date of new legislation in order to prevent inequitable results or to promote some other legitimate purpose. [Citations.] (22 Cal. 3d at p 236.)

We cannot find the appellants herein have raised arguments substantively different from those previously addressed and therefore hold that **Amador Valley Joint**

Union High School District v. State Board of Equalization is controlling.

We affirm the judgment of the trial court.

NOT TO BE PUBLISHED.

STONE, P. J.

We concur:

ABBE, J.

GILBERT, J.

Marvin H. Lewis, Judge

Superior Court County of Ventura

Dorothy L. Schechter, County Counsel, Anthony R. Strauss, Assistant County Counsel, for Defendant and Respondent.

Frank Anton Gunderson, for Plaintiffs and Appellants.

PROOF OF SERVICE

I, Shirley Gunderson, state that I am a citizen of the United States, over the age of 18, employed in the County of Ventura, and am not a party to the within action or proceeding; that my business address is 2239 Townsgate Road, Suite 202, Westlake Village, California; that on July 18, 1983, I served the within **Appellants' Petition for Hearing (2nd Civil No. 65479)**

on: Clerk, Court of Appeal of the
State of California
Second Appellate District
3580 Wilshire Blvd., Room 301
Los Angeles, California 90010
(one copy)

Dorothy Schechter
County Counsel, and
Anthony R. Strauss
Assistant County Counsel
800 So. Victoria Avenue
Ventura, California 93009
(one copy)

by addressing an envelope to each of the above-named persons as indicated above, and placed in each envelope a true copy of each of said documents, and by then sealing

and depositing said envelope, with postage thereon fully prepaid, in the United States mail at Westlake Village, California, where is located the office of the attorney for the persons by and for whom said service was made. Executed on July 18, 1983, at Westlake Village, California.

I declare under penalty of perjury that the foregoing is true and correct.

Shirley Gunderson

PROOF OF SERVICE

I, Shirley Gunderson, state that I am a citizen of the United States, over the age of 18, employed in the County of Ventura, and am not a party to the within action or proceeding; that my business address is 2239 Townsgate Road, Suite 202, Westlake Village, California; that on August 18, 1983, I served the within **Appellants' Petition for Hearing (2nd Civil No. 65479)**

on: Clerk to Judge Marvin H. Lewis
Superior Court of California
for Ventura County
800 South Victoria Avenue
Ventura, California 93009
(one copy)

by addressing an envelope to each of the above-named persons as indicated above, and placed in each envelope a true copy of each of said documents, and by then sealing and depositing said envelope, with postage thereon fully prepaid, in the United States mail at Westlake Village, California, where is located the office of the attorney for the persons by and for whom said service was made. Executed on August 18, 1983, at Westlake Village, California.

I declare under penalty of perjury that the foregoing is true and correct.

Shirley Gunderson

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING
SAN FRANCISCO, CALIFORNIA 94102

AUG 17 1983

I have this day filed Order

HEARING DENIED

In re: 2 Civ. No. 65479

JOSEPH L. DAUTREMONT, JR. &
DELORES A. DAUTREMONT

vs.

COUNTY OF VENTURA

Respectfully,

Clerk

Frank Anton Gunderson
2239 Townsgate Road
Suite 202
Westlake Village, California 91361
(805) 496-6567
Attorney for Plaintiffs
and Appellants

Received for filing in
Clerk's Office
Court of Appeal
Second Appellate District
Sept. 8, 1983

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND DISTRICT, DIVISION SIX

JOSEPH L. DAUTREMONT, JR. and
DELORES A. DAUTREMONT,
Plaintiffs & Appellants,

Civil Action No. 65479

vs. **NOTICE OF APPEAL**

COUNTY OF VENTURA, a Body
Corporate and Politic,
Defendants & Respondents.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

NOTICE IS HEREBY GIVEN that Joseph L. Dautremont and Delores A. Dautremont, plaintiffs above named, hereby appeal to the Supreme Court of the United States from the final judgment of the Court of Appeal of the State of California, Second District, Division Six, entered in this action on June 23, 1983, affirming judgment of the superior Court of the State of California for the County of Ventura, petition for hearing by the Supreme Court of the State of California having been denied on August 17, 1983.

This appeal is taken pursuant to 28 U.S.C. section 1257 (2).

Dated: September 2, 1983

Frank Anton Gunderson

Counsel for Appellants

VERIFICATION BY PARTY (446, 2015.5 C.C.P.)

STATE OF CALIFORNIA, COUNTY OF

I am the
in the above entitled action; I have read the foregoing

and know the contents thereof; and I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe it to be true. I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on (date) at (place) , California.

(signature)

PROOF OF SERVICE BY MAIL
1 (1013a, 2015.5 C.C.P.)

STATE OF CALIFORNIA, COUNTY OF VENTURA

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within above entitled action; my business address is:
2239 Townsgate Road, Suite 202, Westlake Village, CA 91361
on September 2, 1983, I served the within Notice of Ap-

peal on the interested parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Westlake Village, CA addressed as follows:

Clerk, Court of Appeal of the State of California, Second Appellate District, 3580 Wilshire Blvd., Room 301, Los Angeles, CA 90010

Clerk to Judge Marvin H. Lewis, Superior Court of California for Ventura County, 800 So. Victoria Ave., Ventura, CA 93009

Dorothy Schechter, County Counsel, and Anthony R. Strauss, Assistant County Counsel, 800 So. Victoria Ave., Ventura, CA 93009

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on September 2, 1983 at Westlake Village, California.

Shirley Gunderson

(This is from the DEFENDANT'S TRIAL BRIEF)

FRANK ANTON GUNDERSON
Attorney at Law
2659 Townsgate Road, Suite 101
Westlake Village, CA 91361
(805) 495-2627

Original Filed
Mar. 31, 1980
Central District
County Clerk

Attorney for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

JOSEPH L. DAUTREMONT, JR.
and DELORES A. DAUTREMONT,
Plaintiffs,
vs.
COUNTY OF VENTURA, a Body Corporate and Politic,
Defendants.

NO. C 311905
AMENDED COMPLAINT FOR REFUND OF TAXES

COMES NOW the plaintiffs JOSEPH L. DAUTREMONT, JR. and DELORES A. DAUTREMONT, individuals named above, and for cause of action allege as follows:

I

That plaintiffs are and at all times mentioned herein have been individuals with their principal residence and domicile in the County of Ventura, State of California.

II

That defendant COUNTY VENTURA is and at all times mentioned herein was a County of the State of California and as such a body corporate and politic, duly organized and existing under and by virtue of the laws of said State.

III

That on the first day of March, 1978, plaintiffs JOSEPH L. DAUTREMONT, JR. and DELORES A. DAUTREMONT, were the owners of certain land in the said County of Ventura, which land was assessed by the Assessor of said County under his assessment parcel number 635-0-121-240 in the amount of $126,000.00 and against which assessed values together with improvements thereon was extended taxes for the year 1978-1979 in the amount of $1,648.14.

That of said land assessment the sum of $69,225.00 and of said taxes the sum of $959.00 is and was at all times void for each and all of the reasons set forth in plaintiffs' assessment appeal, hereinafter referred to, and for the

further reasons that Section 2a of Article XIIIA of the Constitution of the State of California together with its implementing statutes resulted in an assessment and tax on plaintiffs' property greatly in excess of the assessment and tax imposed on similar classes of property owned by similar classes of property owner, said assessment and tax resulting in denial of due process and equal protection under the law, and that the assessment and tax failed to take account of substantial diminution of value of the subject property due to loss of fixtures and damage done during the course of a burglary perpetrated prior to the lien date for fiscal year 1978-1979, said failure being capricious, arbitrary, and fraudulent, all of which is relied hereon as setting forth the grounds upon which plaintiffs rest their claim herein:

That a copy of said assessment appeal is attached hereto, marked Exhibit "A" and hereby referred to and made a part of their Complaint as fully and to the same extent as if set forth at large in this paragraph.

IV

That prior to the due date for payment of each installment, plaintiff did pay the aforesaid sum of $1,648.14 to the Tax Collector of Ventura County, involuntarily and under protest as to the sum of $959.00, all as set forth in Exhibit "A".

V

That by reason of the foregoing, there is now due, owing and unpaid from defendant COUNTY OF VENTURA to plaintiffs JOSEPH L. DAUTREMONT and DELORES A. DAUTREMONT, the sum of $959.00 together with interest thereon from and after the day of April 10, 1979, to wit, the date of payment under protest.

FOR A SECOND CAUSE OF ACTION

Plaintiffs allege:

I

Plaintiffs hereby reallege each and all of the allegations of Paragraphs I and II of the First Cause of Action of this Complaint as if set forth in full at this point in this Complaint.

II

That on the first day of March, 1979, plaintiffs JOSEPH L. DAUTREMONT, JR. and DELORES A. DAUTREMONT, were the owners of certain land in the County of Ventura, which land was assessed by the Assessor of said County under his assessment number 635-0-121-240 in the amount of $128,516.00 and against which assessed value together with improvements located thereon there

was extended taxes for the year 1979-1980 in the amount of $1,597.22 of which the sum of $798.61 was claimed as the first installment of said tax:

That of said land assessment the sum of $70,606.00 and of said first installment of taxes the sum of $464.00 is and was at all times void for each and all of the reasons set forth in plaintiffs' assessment appeal, hereinafter referred to, and for the further reasons that Section 2a of Article XIIIA of the Constitution of the State of California together with its implementing statutes resulted in an assessment and tax on plaintiffs' property greatly in excess of the assessment and tax imposed on similar classes of property owned by similar classes of property owner, said assessment and tax resulting in denial of due process and equal protection under the law, all of which is relied hereon as setting forth the grounds upon shich plaintiffs rest their claim herein:

III

That prior to the 10th day of December, 1979, plaintiffs JOSEPH L. DAUTREMONT, JR. and DELORES A. DAUTREMONT, did pay the aforesaid sum of $798.61 as first installment of said tax to the Tax Collector of the County of Ventura involuntarily and under protest as to the sum of $464.00, all as set forth in Exhibit "B".

IV

That by reason of the foregoing, there is now due, owing and unpaid from the County of Ventura to plaintiffs JOSEPH L. DAUTREMONT, JR. and DELORES A. DAUTREMONT, the sum of $464.00, together with interest thereon from and after the 10th day of December, 1979, the date of said payment under protest.

WHEREFORE, judgment is prayed in favor of plaintiffs and against the defendant COUNTY OF VENTURA in the following manner and for the following sums, to wit:

ON THE FIRST CAUSE OF ACTION:

1. For plaintiffs JOSEPH L. DAUTREMONT, JR. and DELORES A. DAUTREMONT against the COUNTY OF VENTURA in the principal sum of $959.00 together with interest thereon from and after the 10th day of April, 1979, to date of entry of judgment herein:

2. For plaintiffs' cost of suit herein:

3. For such other and further relief as the Court may deem just and proper.

ON THE SECOND CAUSE OF ACTION:

1. For plaintiffs JOSEPH L. DAUTREMONT, JR. and DELORES A. DAUTREMONT against the COUNTY OF VENTURA in the principal sum of $464.00 together with interest thereon from and after the 10th day of December, 1979, to date of entry of judgment herein:

2. For plaintiffs' costs of suit herein:

3. For such other and further relief as the Court may deem just and proper.

FRANK ANTON GUNDERSON, Attorney
for Plaintiffs

PROOF OF SERVICE BY MAIL

Frank Anton Gunderson declares:

I am an active member of the State Bar of California, not a party to this action, and my business address is:
2659 Townsgate Road, Suite 101
Westlake Village, CA 91361

On 13 of March, 1980 I deposited in the mail at Canoga Park, California a copy of the attached AMENDED COMPLAINT FOR REFUND OF TAXES in a sealed envelope, with postage thereon fully prepaid, addressed to:

County of Ventura
c/o Anthony R. Strauss
Assistant County Counsel
Administration Building
County Government Center
800 South Victoria Avenue
Ventura, CA 93009

and

State Board of Equalization
c/o R. E. Nielsen
Deputy Attorney General
3580 Wilshire Boulevard
Los Angeles, CA 90010

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 13 March, 1980, at Canoga Park, California.

Frank Anton Gunderson

FILED
NOV 24, 1981
ROBERT L. HAMM, County Clerk
By:
Deputy County Clerk

Frank Anton Gunderson
2239 Townsgate Road
Suite 202
Westlake Village, California 91361
(805) 496-6567

Attorney for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

JOSEPH L. DAUTREMONT, et al.,

Plaintiffs,

vs.

COUNTY OF VENTURA, a Body Corporate and Politic,

Defendant.

Case No. 72963

TRIAL BRIEF

Date: December 21, 1981

Time: 8:30 a. m.

Dept.: 1

STATEMENT OF FACTS

On February 9, 1978, Plaintiffs took title to their home, one of about two dozen built in that tract and completed in 1968. On February 15, 1978, the home was burglarized and vandalized causing damage in the approximate amount of $4,087.00. The damage, total loss of chandeliers and Levelor blinds, has never been repaired.

On June 6, 1978 the people of the State of California approved an Initiative Measure known as Proposition 13. This Initiative measure subsequently was incorporated into the State Constitution as Article XIII-A.

Section 1 (a) of Article XIII-A provides that the maximum ad valorem tax on real property shall not exceed 1% of full cash value of the property.

Section 2(a) of Article XIII-A defines full cash value as the County Assessor's valuation as shown on the 1975-76 tax bill (which was established as of the lien date for that tax year, March 1, 1975) or, when newly constructed or purchased after March 1, 1975, the actual appraised value.

The effect of section 2(a) of Article XIII-A is to create, for the purpose of taxation, two classes of property owner: those who took title prior to March 1, 1975 and those who took title after March 1, 1975.

Section 2(b) of Article XIII-A provides that the full cash value, as defined in section 2(a), may increase by not more

than 2% in any given year to reflect inflation. This section also provides, subsequent to passage of Proposition 8, that the full cash value may be reduced to reflect substantial damage, destruction or other factors causing decline in value.

Subsequent to receipt of their tax bill for the tax year 1978-79, Plaintiffs timely filed Application for Changed Assessment, attached hereto as Exhibit "A", and is incorporated herein as if fully set forth, citing two grounds therefore: (1) that the property was substantially damaged prior to the lien date of March 1, 1978, damage which should have been reflected in the assessor's appraisal, and (2) that the appraisal of the property as of the transfer date, rather than the base year date (March 1, 1975) resulted in a lack of equal protection under the law in derogation of the California and United States Constitutions.

Hearing was had on Plaintiff's Application on March 26, 1979. A transcript of that hearing is attached hereto as Exhibit "B", and is incorporated herein as if fully set forth. The Application was denied in its entirety, the Board of Equalization finding as fact that:

(1) The property had changed ownership on February 9, 1978.

(2) The purchase price on February 9, 1978 was $126,000.00.

(3) The purchase price was the properly enrolled value under Article XIII-A, section 2 (a) of the California Constitution.

(4) The Board of Equalization lacks jurisdiction to rule on the Constitutionality of Proposition 13 (Article XIII-A).

(5) The burglary occurred after February 9, 1978 and therefore does not affect the enrolled value.

Subsequent to the Board's findings, a transcript of which is attached hereto as Exhibit "C", and is incorporated herein as if fully set forth, Plaintiffs filed an action (SH 12831) in the Small Claims Division of the Ventura County Municipal Court. That Court ordered the case transferred to Superior Court pursuant to CCP 396.

Subsequent to receipt of their Tax Bill for the tax year 1979-80, Plaintiffs again timely filed Application for Changed Assessment, a copy of which is attached hereto as Exhibit "D", and is incorporated herein as if fully set forth, on grounds identical to those of their Application of the previous year. Hearing, a transcript of which is attached hereto as Exhibit "E", and is incorporated herein as if fully set forth, was held on December 10, 1979 whereupon the Application was denied. Findings, a transcript of which is attached hereto as Exhibit "F", and is incorporated herein as if fully set forth, were made that the assessment of the previous year had been correct under the law existing at the time and that the increased value as of March 1, 1979 was also correct, and that the Board lacked jurisdiction to rule upon the constitutional question. This suit followed.

CONTENTIONS OF PLAINTIFFS

First, Plaintiffs contend that the Board of Equalization erred in finding that the appraised value on the transfer date (February 9, 1978), purportedly required by Article XIII-A, section 2 (a), could not be reduced to reflect substantial damage and destruction.

Second, Plaintiffs contend that imposing upon real property owners a tax greatly in excess of the tax imposed upon similarly situated owners of similar property who happened to take title before a certain date (March 1, 1975) results in an unconstitutional lack of equal protection under the law.

POINTS AND AUTHORITIES

IN SUPPORT OF PLAINTIFF'S FIRST CONTENTION

ALL PROPERTY IS TAXABLE AND SHALL BE ASSESSED AT THE SAME PERCENTAGE OF FAIR MARKET VALUE

California Constitution, Article XIII, section 1(a)

ALL PROPERTY SO ASSESSED SHALL BE TAXED IN PROPORTION TO ITS FULL VALUE.

California Constitution, Article XIII, section 1(b)

This question was considered by the Court of Appeals for the Fourth District in **State Board of Equalization vs. Board of Supervisors** (1980) 105 CA 3d 813, 164 Cal.Rptr. 739. In that case, the State Board of Equalization had adopted a rule which precluded reduction in real property value if actual market value reduction occurred after the Proposition 13 base assessment year (1975). The Court of Appeals for the Fourth District, affirming the trial court, held such a rule was **void** in view of Article XIII, Section 1, saying:

> "it would be evident the acquisition value of real property set forth in XIII A could not exceed the actual fair market value of the property by virtue of Article XIII, section 1 (a) as so construed. This

was true before the passage of 8 and was further clarified by 8 as will be set forth below.

Using the applicable rules of construction, we find the Board's tax rule (rule 461) as applied, null and void."

Id, at 823

In addition the Legislature caused to be placed on the ballot Proposition 8, subsequently passed, which specifically provided that acquisition value **should** be reduced to reflect a decline in real property value, **and** specifically provided that its provisions were to be applied **retroactively** to the 1978-79 tax year.

ARGUMENT

Thus, although Article XIII-A, section 2 clearly provides for a valuation as of March 1, 1975 or, alternatively, as of a later transfer date, that section did **not** repeal Article XIII section 1 which calls for **all** property in the state to be taxed **in proportion** to its fair market value. Hence, the fair market value, and resulting assessed value, as of the transfer date, February 9, 1978 in this case, could and should have been reduced by the amount of the damage done in the February 15th burglary. Contrary to the findings of the Board of Equalization, Article XIII-A did **not** preclude taking such after-occurring damage into consideration. And, even if it had, the provisions of Proposition 8, revising Article XIII-A, specifically provided that acquisition value be reduced to reflect a decline in property value, and was also specifically to be applied retroactively to the 1978-79 tax year. Whatever the proper method for valuing Plaintiff's home may have been, that value should have been reduced by the amount of damage done in the burglary. And it should have been reduced for the tax year **1978-1979** because the damage occurred prior to the lien date for that year. Any subsequent valuations made by comparing Plaintiffs home to similar homes should also have taken into account the fact that **this** home lacks some of the amenities inherent in its neighbor's.

The Board erred in its finding that Proposition 13

(Article XIII-A) precluded reducing the acquisition value to reflect after-occurring damage. The Board erred again when it refused to obey the mandate of Proposition 8, in that the Board did **not** reduce the acquisition value, and the resulting assessed value, by the amount of that damage. The Board erred yet again when it found that increases due to inflation offset the reduction in value.

The acquisition value was established February 9, 1978; the damage occurred February 15, 1978; the lien date was March 1, 1978. The Plaintiffs are entitled to an assessment that accurately reflects the value of their home in the year the tax is due -- **not** a value which the home may have reached a year or two subsequent. Plaintiffs introduced evidence, uncontroverted, that their home had suffered over $4,000 in damage between the transfer date and the lien date, on matter of about six weeks. Their appraisal and assessment should have been adjusted accordingly.

POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S SECOND CONTENTION

Article XIII-A was, of course, scrutinized by the California Supreme Court in **Amador Valley Joint Union High School District vs. State Board of Equalization**, 22 Cal.3d 235. Plaintiffs recognize the burden they must carry in light of that decision.

THE EQUAL PROTECTION CLAUSE OF THE FOURTH AMENDMENT TO THE U.S. CONSTITUTION IS VIOLATED WHEN MAJOR TAX DIFFERENCES ARE MADE TO DIFFER ON MINOR OR IRRELEVANT DISTINCTIONS.

The tax laws of the states are subject to the equal protection clause of the fourteenth amendment. While the United States Supreme Court has ruled that state taxation is primarily a matter to be determined by the states, taxing schemes will be overturned in limited circumstances. For example, in **Kahn v. Shevin**, 416 U.S. 351, 355 (1974) the Court stated:

> "We have long held that 'where taxation is concerned and no specific federal right, apart from equal protection, is imperiled, the states have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation.'

Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 359. A state tax law is not arbitrary although it 'discriminates in favor of a certain class --- if the discrimination is founded upon a reasonable distinction, or difference in state policy' not in conflict with the Federal Constitution.'

Allied Stores v. Bowers, 358 U.S. 522, 528."

While the states do indeed have "large leeway" in classifying taxpayers, and the states may discriminate in favor of certain classes, such discrimination must be founded upon a reasonable distinction in state policy. We submit that there is no reasonable distinction or difference in state policy between those broad groups of citizens, individual and corporate, who took title to their property before and after March 1, 1975.

In **Royster Guano Co. vs. Virginia**, 253 U.S. 412 (1920) the State of Virginia imposed a tax on all income of Virginia corporations which did business in Virginia as well as in other states, but exempted the income of Virginia corporations which did no actual business in Virginia. The Court stated:

> "It is unnecessary to say that the 'equal protection of the laws' required by the Fourteenth Amendmend does not prevent the States from resorting to classification for the purposes of legislation. Numerous and familiar decisions of this court establish that they have a wide range of dis-

cretion in that regard. But **the classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation**, so that all persons similarly circumstanced shall be treated alike. The latitude of discretion is notably wide in the clsssification of property for purposes of taxation and the granting of partial or total exemptions upon grounds of policy . . .Nevertheless, a discriminatory tax law cannot be sustained against the complaint of a party aggrieved if the classification appear to be altogether illusory." (emphasis added). (citations omitted.)

Id. at 415

The classification scheme in **Royster Guano** was found to be illusory and not based on a reasonable distinction, since the foreign income of all Virginia corporations would be exempt. The Court further concluded that whether or not a corporation conducted business in Virginia should have no bearing.

"But no ground is suggested, nor can we conceive of any, sustaining this exemption which does not apply with equal or greater force as a ground for exempting from taxation ---."

Id. at 416.

In **Louisville Gas Co. vs. Coleman**, 277 U.S. 32 (1928) a Kentucky statute provided that all mortgages not

maturing within five years were subject to a tax at the time of filing, while mortgages which did mature within that time were not subject to the tax. In that case, the Court noted:

> "In the first place, it may be said generally that the equal protection clause means that the rights of all persons must rest upon the same rule under similar circumstances, (citing cases), and that it applies to the exercise of all the powers of the state which can affect the individual or his property, including the power of taxation. (citing cases). --- the classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.' (citing cases). That is to say, mere difference is not enough; the attempted classification 'must rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis.'"
>
> (citing cases)
>
> **Id.** at 37.

In the present case, the object of Proposition 13 was simple: to reduce the property tax then being collected,

and to "make property taxes FAIR, EQUAL, and within the ABILITY to pay for all Californians". **Rebuttal** to argument against Prop 13, Voters Pamphlet. The backers of the Initiative Measure, fully cognizant of the demographics of California voters, created two classes of property owner: those who already had their property and were mathematically certain to vote, and those who did not then own property and were mathematically unlikely, or even eligible, to vote. While perhaps not arbitrary, in a diabolical sense, Plaintiffs submit that in the constitutional sense this classification is both arbitrary and without rational basis. There is no evidence that one group is better able to pay than the other; no evidence that one group derives greater protection and service from the state than the other, and no evidence of compelling administrative convenience.

Quoting again the U.S. Supreme Court in **Louisville Gas**, supra:

> "The application of the equal protection clause does not depend upon what name is given to the tax. Whether the tax now in question be called a privilege tax or a property tax, it falls in effect upon one indebtedness and not upon another where the sum of each is the same; where both are incurred by corporations or both by natural persons; where the percentage of interest to be paid is the same; where the mortgage security is

identical in all respects; where, in short, the only difference well may be that one is payable in 60 months and the other in 59 months. --- it does not follow that because the state may classify for the purpose of proportioning the tax, it may adopt the same classification to the end that some shall bear a burden of taxation from which others under circumstances identical in all respects save in respect of the matter of value, are entirely exempt."

Id. at 38.

Under **Royster Guano and Louisville Gas** it would seem that the equal protection clause is violated where major tax differences are made to so differ on minor or irrelevant distinctions. Is there a major difference, reaching any public policy, in the fact that Plaintiffs here took title to their home, built in 1968, on February 9, 1978 rather than February 9, 1975? We submit there is not. Is the date March 1, 1975 significant, or relevant, to requiring Plaintiffs to pay higher taxes than their neighbors in a substantially identical home? We submit it is not. It appears, rather, that March 1, 1975 was arbitrarily chosen for the purpose of convenience, and Plaintiffs submit that classification of those who took title to their property subsequent to that date and subjecting them to a greatly increased tax is not reasonable, nor does classification based on that date "rest on any ground of difference hav-

ing a fair and substantial relation to the object of the legislation."

THE IMPROPER VALUATION OF PROPERTY FOR TAX PURPOSES VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FEDERAL CONSTITUTION.

In **Cumberland Coal Co. vs Board of Revision**, 284 U.S. 23 (1931) a county tax board valued all virgin coal at the same value, even though some coal was twice as valuable due to its accessibility and other variables. The U.S. Supreme Court found that **failure to recognize valid differences was improper, just as was assignment of disparate values to equally valuable property**, saying:

> "In applying this principle, the fact that a uniform percentage of assigned values is used, cannot be regarded as important if, in assigning the values to which the percentage is applied, **a system is deliberately adopted which ignores differences in actual values** so that property in the same class as that of the complaining taxpayer is valued at the same figure (according to the unit of valuation, as, for example, an acre) as the property of the other owners which has an actual value admittedly higher. Applying the

same ratio to the same assigned values, when the actual values differ, creates the same disparity in effect as applying a different ratio to actual values when the latter are the same. (emphasis added).

Id. at 29.

Similarly, in **Raymond v. Chicago Traction Co.**, 207 U.S. 20 (1907), a local tax board assigned greatly disparate values to similar properties held by various corporations. The Court found the assessments to be an unconstitutional discrimination, noting that "[i]t is not a question of mere difference of opinion as to the valuation of property, but it is a question of difference of method in the manner of assessing property of the same kind." **Id.** at 38. The Court concluded that such an unequal method of determining values is unconstitutional:

"Independently of this statute, however, we are of opinion that when a rule or system of valuation is adopted by those whose duty it is to make the assessment, which is designed to operate unequally and to violate a fundamental principle of the Constitution, and when this rule is applied not solely to one individual, but to a large class of individuals or corporations, that equity may properly interfere to restrain the operation of this unconstitutional exercise of power."

Id. at 37-38, **quoting Cummings v. National Bank**, 101 U.S. 153 (1879).

In **Sioux City Bridge Co. v. Dakota County**, 260 U.S. 441 (1923), a county **assessed the value of taxpayer's property at its fair market value,** but **assessed the property of other taxpayers at a level far below the fair market value.** In reversing the lower court's opinion upholding the discrimination, the Court concluded that a violation of equal protection exists where there is "an intentional violation of the essential principle of practical uniformity." **Id.** at 447. The Court also stated:

> "The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents. And it must be regarded as settled that **intentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property.**" (citing cases)
> (emphasis added.)

Id. at 445, **quoting Sunday Lake Iron Co. v. Wakefield**, 247 U.S. 350 (1918). This language seems equally applicable to the instant case.

CLASSIFICATION OF TAXPAYERS WHICH RESULTS IN DISCRIMINATION AGAINST ONE CLASS VIOLATES THE EQUAL PROTECTION CLAUSE WHERE THE SOLE REASON IS ADMINISTRATIVE CONVENIENCE.

In **Stewart Dry Goods Co. vs Lewis** 294 U.S. 550 (1935), the Commonwealth of Kentucky applied a gross sales tax which worked unequally among various taxpayers. The Commonwealth argued that the gross sales tax was **more convenient** than another type of tax which would have worked more fairly. To that argument, the Court replied:

> "We are told that the gross sales tax in question is in truth a rough and ready method of taxing gains under the guise of taxing sales; that it is less complicated and more convenient of administration than an income tax; and Kentucky for these reasons is at liberty to choose this form, and to ignore the consequent inequalities of burden in the interest of ease of administration. The argument is in essence that it is difficult to be just, and easy to be arbitrary. If the Commonwealth desires to tax incomes **it must take the trouble equitably to distribute the burden of the impost. Gross inequalities may not be ignored for the sake of ease of collection.** (emphasis ad-

ded).

Id. at 559-60.

In the present case, March 1, 1975 was chosen as a date at which to value property, so long as it remained under ownership of the person then owning it. Everyone acquiring property after that date would pay tax on that property based on its fair market value. That owners of property who purchased before March 1, 1975 pay a greatly diminished tax relative to its fair market value is well known and undisputed. What is the relevance of that date March 1, 1975? None, other than convenience.

If there be no relevance or significance to the date March 1, 1975 there likewise can be no justification for discriminating against taxpayers who took title to their property after that date.

ARGUMENT

Article XIII-A, section 2 (a) as currently construed clearly creates two classes of taxpayer in California. One class, who acquired their property prior to March 1, 1975, has its property tax calculated by applying the factor 1% to the full market value as it appeared on March 1, 1975, which may **not** be that taxpayer's acquisition cost. Any escalation of that full market value is limited to 2% per year. The value of Plaintiffs' home on March 1, 1975, based on the fair market value as of that date, was approximately $53,500.00. If that value were increased by 2% each year the full market value for the tax years 1978-79 and 1979-80 would be $56,774.63 and $57,910.12, respectively. Instead, due to the discriminatory scheme imposed by Article XIII-A, Plaintiffs' home is valued at $126,000.00 and $128,520.00 for those years. This results in a tax on Plaintiff's property which is more than double that which would be imposed had Plaintiffs acquired their property prior to March 1, 1975. Plaintiffs tax is also more than double that which would be imposed on the property had the person owning it on March 1, 1975 kept it. Plaintiff's tax is also more than double that imposed on their neighbors who own substantially identical property, but who happened to acquire the property prior to March 1, 1975.

There is no possible showing that Plaintiffs, and others in the same broad class, require more services than those

in the other class. Nor can it be that members of one class are intrinsically better able to pay than those of the other class. There is, in short, no reasonable justification for choosing the arbitrary date of March 1, 1975, in establishing the discriminatory and burdensome tax scheme under which real property in this state is taxed; a burden carried by what was, at the time the people voted on that scheme, a small minority of those mathematically likely to vote. This small minority is entitled to relief from this tyranny of the majority.

Dated: November 23, 1981

Respectfully submitted,

Frank Anton Gunderson
Attorney for Plaintiffs.

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Attorneys for Defendant

SUPERIOR COURT OF CALIFORNIA
COUNTY OF VENTURA

JOSEPH L. DAUTREMONT, et al.,

Plaintiffs,

vs.

COUNTY OF VENTURA, a Body Corporate and Politic,

Defendant.

No. 72963

DEFENDANT'S TRIAL BRIEF

Hearing Date: 12/21/81
Time: 8:30 a.m.
Department: 1

INTRODUCTION

This case comes before the court as a suit for the refund of taxes brought pursuant to Revenue and Taxation Code section 5140 et seq. By this action, plaintiffs are challenging their real property taxes for tax years 1978-79 and 1979-80. Plaintiffs initially commenced this action in the Small Claims Court for the County of Ventura on October 4, 1979. That court determined that it had no jurisdiction in the matter and transferred the case to the superior court pursuant to Code of Civil Procedure section 396. Plaintiffs did not, however, pursue the matter in the superior court at that time and no superior court case number was given to the case. Instead, on January 31, 1980, plaintiffs filed an action in the Los Angeles Superior Court on the same causes of action. By mutual agreement of the parties, that matter was transferred to this court pursuant to Code of Civil Procedure section 399, and was assigned the case number herein. Although these two cases have never been consolidated in this court, the issues are identical and can be determined in the present action.

In their complaint, plaintiffs allege that their taxes were erroneously assessed and collected for two reasons. First, plaintiffs claim that the assessed valuation of their real property was too high in that the assessor did not consider a decline in its value caused by a burglary immediately subsequent to the purchase of the property. Secondly,

plaintiffs claim that their assessment, which was made pursuant to Proposition 13 (Article XIIIA of the California Constitution) was in violation of the equal protection provisions of both the United States and California Constitutions.

Plaintiffs and defendant have settled this matter with respect to plaintiffs' first claim. A settlement agreement to that effect will be filed with the court on or before the date set for trial. Therefore, the only issue remaining between the parties is with respect to the constitutionality of the assessment made pursuant to Article XIIIA.

STATEMENT OF FACTS

Plaintiffs purchased their single-family home in Simi Valley, California, on February 9, 1978. On February 15, 1978, the home was burglarized causing damage claimed to be approximately $4,087.00.

On June 6, 1978, the people of the State of California adopted the initiative measure known as Proposition 13 adding Article XIIIA to the California Constitution (a copy of the current version of Article XIIIA is attached hereto as Exhibit 1). The effect of Proposition 13 was to limit the value of real property in the State of California for taxation purposes to its value as shown on the 1975-76 tax bill or thereafter to the appraised value of such property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment (Article XIIIA,

section 2(a)). By its provisions, Proposition 13 became effective for tax year 1978-79 beginning July 1, 1978.

Pursuant to the requirements of Proposition 13, the Ventura County Assessor appraised the property for the 1978-79 tax year based upon the value of the property as of February 9, 1978, the date it was acquired by the plaintiffs. To arrive at this value, the assessor used the purchase price of $126,000.00. The assessor did not, however, take into consideration any decrease in value caused by the burglary. At the time of the assessment, it was generally understood that Proposition 13, as it then read, would not allow a decrease in assessed value for the type of loss incurred by the plaintiffs[1] (see plaintiffs' trial brief, Exhibit B, page 5, line 28; all references to "exhibits" are to the exhibits attached to plaintiffs' trial brief which constitute the records of the proceedings before the Ventura County Board of Equalization).

1. Because it was thought that Proposition 13 precluded an assessor from recognizing any decline in property value, the California Legislature adopted Senate Constitutional Amendment 67 on August 18, 1978, which was designated as Proposition 8 for the fall 1978 election. On November 7, 1978, the voters adopted Proposition 8 which amended Article XIII A to specifically provide that assessed value must be reduced to reflect a decline of real property value below its Proposition 13 base. The histories of Propositions 8 and 13 are set forth in the case of **State Board of Equalization v. Bd. of Supervisors** (1980) 105 Cal.App.3d 813, 816-818. In that case, the court held that Proposition 8 should be applied retroactively to clarify Proposition 13.

Upon receipt of their tax bill for tax year 1978-79, plaintiffs filed an application for equalization with the Ventura County Board of Equalization (hereinafter "Board"). The hearing on said application was held on March 26, 1979. At that time, plaintiffs claimed that the assessed valuation enrolled on their residence was too high in that 1) it did not recognize the burglary, and 2) that Proposition 13 denied them equal protection under both the federal and state constitutions on the grounds that their property should be appraised at its 1975 value, not its 1978 value (Exhibit B, pages 2-5). The Board denied plaintiffs' application on the grounds that plaintiffs' application raised issues of law not within the Board's jurisdiction and sustained the value enrolled by the assessor (Exhibit B, page 6, lines 4-13; Exhibit C).

Similarly, upon receipt of their 1979-80 tax bill, plaintiffs once again appealed their assessment to the Board. Hearing on this application was held on December 10, 1979. The same arguments were raised by plaintiffs, and the Board once again denied plaintiffs' application. (Exhibit F).

Because the issue of the impact of the burglary has been settled between the parties, the court need not render a decision on that issue. Therefore, the only remaining issue is with respect to the equal protection challenge to Article XIIIA.

ARGUMENTS

I

THIS COURT HAS A LIMITED SCOPE OF REVIEW

The plaintiffs in this action have no right to a trial de novo on any issues of **fact (Bank of America v. Mundo** (1951) 37 Cal.2d 1, 5; 229 P.2d 345). A county board of equalization or assessment appeals board is a constitutionally sanctioned entity and is given the express power to equalize the valuation of taxable properties within a county and to equalize disputed assessments (**Hunt-Wesson Foods, Inc. v. County of Alameda** (1974) 41 Cal.App.3d 163, 168). The determination of the board on factual issues is entitled to all the deference and respect due a judicial decision (**Strumsky v. San Diego County Employees Retirement Assn.** (1974) 11 Cal.3d 28, 36; 112 Cal.Rptr. 805, 520 P.2d 29). The function of the Superior court is merely to review the transcript of the proceedings before the board and to determine if there is substantial evidence to support any factual findings (**Hunt-Wesson Foods, Inc., supra**, at page 169).

It is, however, within the court's province to decide issues of **law**. The legal determinations of the assessor and the board are subject to judicial review (**County of Sac-**

ramento v. Assessment Appeals Bd. No. 2 (1973) 32 Cal.App.3d 654, 661; 108 Cal.Rptr. 434).

Because the instant case deals primarily with issues of law, the court may exercise its independent judgment with respect to such legal issues. However, to the extent that such issues rest upon a factual base, the court is limited to the evidentiary record of the proceedings before the board.

II

ARTICLE XIII A IS NOT VIOLATIVE OF THE EQUAL PROTECTION GUARANTEES OF THE UNITED STATES OR THE CALIFORNIA CONSTITUTIONS, AND PLAINTIFFS HAVE NOT BEEN DENIED THE RIGHTS GUARANTEED THEREBY.

Plaintiffs claim that section 2(a) of Proposition 13 denies them equal protection in that it creates two classes of taxpayers in California. The first class consists of those taxpayers who owned their real property on March 1, 1975. For such taxpayers, their real property tax would be based on the value of the property as of that date. The second class of taxpayers is comprised of those persons who acquired or newly constructed their property subsequent to 1975. The taxes on the real property owned by such taxpayers would be based on the value of the property at the

time of its acquisition or new construction. Plaintiffs claim that because of this distinction, taxpayers who owned substantially identical properties may be paying a different amount of taxes (plaintiffs' trial brief, pages 19-20).

Plaintiffs' argument must fail for two reasons. [**First**, there is nothing in the record to show that plaintiffs are in fact taxed more than owners of substantially similar **properties**.] Plaintiffs presented no evidence to this effect at either of the hearings before the Board. The **only purported "evidence"** on this issue consists of counsel's unsworn statements in the "Argument" portion of plaintiffs' trial brief (plaintiffs' trial brief, page 19, lines 9-24). Therefore, there would be no basis in fact upon which to find that plaintiffs have received disparate treatment.

[**Secondly**, and more importantly, however, is the fact that even if such disparate treatment were to be found, the California Supreme Court has already determined that section 2(a) of Article XIII A is not violative of either the equal protection clause of the California Constitution or the Constitution of the **United States**.] Thus, in the case of **Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization** (1978) 22 Cal.3d 208, 232; 149 Cal.Rptr. 239; 583 P.2d 1281, petitioners therein argued, among other things, that the "roll back" provision of section 2(a) of Article XIII A requiring that property be rolled back to its 1975-76 value unless it has been subsequently purchased, newly constructed, or has undergone a

change of ownership, results in invidious discrimination between owners of similarly situated properties in that two substantially identical homes located side-by-side and receiving identical governmental services could be assessed and taxed at different levels depending upon their date of acquisition. Noting that petitioners' equal protection challenge was probably premature, the court nonetheless elected to decide that issue (**Amador, supra**, 22 Cal.3d at page 233).

The court in **Amador** considered virtually all of the cases cited by plaintiff in its trial brief (**Amador, supra**, 22 Cal.3d at page 234). Nevertheless, the court found that section 2(a) of Article XIII A is constitutional. In distinguishing those cases, the court said:

> ["The foregoing cases, however, involved constitutional or statutory provisions which **mandated** the taxation of property on a **current value basis.**] These **cases do not** purport to **confine the states to a current value system** under equal protection principles **or to state an exception** to the general rule accepted both by the United States Supreme Court and by us, as previously noted, **that a tax classification or disparity of tax treatment will be sustained so long as it is founded upon some reasonable distinction or rational basis.**" (Emphasis in original.)

(**Amador, supra**, 22 Cal.3d at p. 235.)

The court went on to explain why section 2(a) of Article XIII A does not deny equal protection as follows:

> "By reason of section 2, subdivision (a), of the article, except for property acquired prior to 1975, **henceforth** all real property will be assessed and taxed at its value **at date of acquisition** rather than at current value (subject, of course, to the 2 percent maximum annual inflationary increase provided for in subdivision (b)). This 'acquisition value' approach to taxation finds **reasonable support** in a theory that the annual **taxes** which a property owner must pay **should bear some rational relationship to the original cost** of the property, rather than relate to an unforeseen, perhaps unduly inflated, current value. **Not only does an acquisition value system** enable each property owner to estimate with some assurance his future tax liability, but also the system may operate on a fairer basis than a current value approach. For example, a taxpayer who acquired his property for $40,000 in 1975 henceforth will be assessed and taxed on the basis of that cost (assuming it represented the then fair market value). This **result is fair and equitable** in that his **future taxes may be said reasonably to reflect the price**

he was originally willing and able to pay for his property, rather than an inflated value fixed, after acquisition, in part on the basis of sales to third parties over which sales he can exercise no control. On the other hand, a person who paid $80,000 for similar property in 1977 is henceforth assessed and taxed at a higher level which reflects, again, the price he was willing and able to pay for that property. Seen in this light, and contrary to petitioners' assumption, section 2 does not unduly discriminate against persons who acquired their property after 1975, for those persons are assessed and taxed in precisely the same manner as those who purchased in 1975, namely, on an acquisition value basis predicated on the owner's free and voluntary acts of purrhase **This is an arguably reasonable basis for assessment**. (We leave open for future resolution questions regarding the proper application of Art. XIIIA to involuntary changes in ownership or new construction.)

"In addition, the fact that two taxpayers may pay different taxes on substantially identical property is not wholly novel to our general taxation scheme. For example, the computation of a **sales tax** on two identical items of personalty may vary substantially, depending on the exact

sales price and the availability of a discount. Article XIII A introduces a roughly comparable tax system with respect to real property, whereby the taxes one pays are closely related to the acquisition value of the property.

("**In converting** from a current value method to an acquisition value system, the framers of article XIII A chose not to 'roll back' assessments any earlier than the 1975-76 fiscal year. For assessment purposes, persons who acquired property prior to 1975 are deemed to have purchased it during 1975. These persons however, **cannot complain** of any unfair tax treatment in view of the substantial tax advantage they will reap from a return of their assessments from current to 1975-76 valuation levels. Indeed, the adoption of a uniform acquisition value system without some 'cut off' date reasonably might have been considered both **administratively unfeasible and incapable of producing adequate tax revenue**. The selection of the 1975-1976 fiscal year as a base year, although seemingly arbitrary, may be considered as comparable to utilization of a 'grandfather' clause wherein a particular year is chosen as the effective date of new legislation, in order to prevent inequitable results or to promote some other **legitimate** purpose. (See **Har-**

ris v. Alcoholic Bev. etc. Appeals Bd. (1964) 61 Cal.2d 305, 309-310 [38 Cal.Rptr. 409, 392 P.2d 1].) Similar provisions are routinely upheld by the courts. (See, e. g., **New Orleans v. Dukes** (1976) 427 U.S. 297, 305-306 [49 L.Ed.2d 511, 517-519, 96 S.Ct. 2513]; **In re Norwalk Call** (1964) 62 Cal.2d 185, 188 [41 Cal.Rptr. 666, 397 P.2d 426].)

"Petitioners insist, however, that property of equal **current** value must be taxed equally, regardless of its original cost. [This proposition is demonstrably without legal merit] for our state Constitution itself expressly contemplates the use of 'a value standard other than fair market value...' (Art. XIII, § 1, subd. (a).) Moreover, the Legislature is empowered to grant total or partial exemptions from property taxation on behalf of various classes (e. g., veterans, blind or disabled persons, religious, hospital or charitable property; see art. XIII, § 4), despite the fact that similarly situated property may be taxed at its full value. In addition, homeowners receive a partial exemption from taxation (art. XIII, § 3, subd. (k)) which is unavailable to other property owners. As noted previously, the state has wide discretion to grant such exemptions. (**Royster Guano Co. v. Virginia, supra**, 253 U.S. 412, 415 [64 L.Ed. 989, 991].)

"Finally, no compelling reason exists for assuming that property lawfully may be taxed **only** at current values, rather than at some other value, or upon some different basis.

As the United States Supreme Court has explained, 'The State is not limited to **ad valorem** taxation. It may impose different specific taxes upon **different trades** and professions and may vary the rate of excise upon **various products**. In levying such taxes, the State is not required to resort to close distinctions or to maintain a precise, scientific uniformity with reference to composition, use or value.' (**Ohio Oil Co. v. Conway, supra**, 281 U. S. 146, 159 [74 L.Ed. 775, 782].) We cannot say that the acquisition value approach incorporated in Article XIII A, by which a property owner's tax liability bears a reasonable relation to his costs of acquisition, is **wholly** arbitrary or irrational. Accordingly, the measure under scrutiny herein meets the demands of equal protection principles." (Emphasis in original.) (**Amador, supra**, 22 Cal.3d at 234.)

Therefore, plaintiffs' claim that they had been denied equal protection as guaranteed by both the federal and

state constitutions is without merit and should be denied and judgment should be rendered in favor of defendant.

Respectfully submitted,

DOROTHY L. SCHECHTER
County Counsel, County of Ventura

Dated: 12/7/81

By:
ANTHONY R. STRAUSS
Assistant County Counsel

Attorneys for Defendant

CALIFORNIA CONSTITUTIONAL PROVISIONS

ARTICLE XIIIA*

Tax Limitation

[Sections 1 through 6 added by amendment adopted June 6, 1978.]

SEC. 1. **Maximum ad valorem tax on Real Property.** (a) The maximun amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties.

(b) The limitation provided for in subdivision (a) shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charge on any indebtedness approved by the voters prior to the time this section becomes effective.

Construction.--Subdivision (b) excludes from the operation of subdivision (a) taxes levied to pay any indebtedness approved by the voters, not just taxes levied to pay bonded indebtedness. Shasta County v. Trinity County, 106 Cal. App. 3d 30. Teal property annexed to a water district after passage of this section is subject to an ad valorem tax in excess of one percent to pay interest and redemption charges on indebtedness of the district approved by the voters prior to that date, despite the fact that the property annexed was not included within the territory served by the district at the time the indebtedness was approved. **Metropolitan Water District v. Dorff**, 98 Cal. App. 3d 109. An assessment on real property in the area served by a water agency to make up a deficiency incurred by the agency as a result of its purchases and resales of water does not violate the maximum tax limitation where the contract between the agency and the seller, approved by county voters, authorized a tax or assessment sufficient to provide for all payments under the contract. **Kern County Water Agency v. Board of Supervisors**, 96 Cal. App. 3d 874. The one percent maximum tax limitation does not apply to special assessments levied pursuant to States & Highway Code §§5000 et. seq. and 10000 et. seq. **Fresno County v. Malmstrom**, 94 Cal. App. 3d 974.

1978-79 Unsecured Roll.--§§1(a) and 2(a) were not applicable to property taxed on the unsecured portion of the assessment roll for the tax year 1978-79. Taxes on unsecured property, both real and personal, were to be assessed at the prior year's rate for the secured roll as provided by Article XIII, §12 of the Constitution. **Board of Supervisors v. Lonergan**, 27 Cal. 3d 855; **R.E. Hanson, Jr. Mfg. v. Los Angeles County**, 27 Cal. 3d 870. The application of this article to the unsecured tax rolls can be determined in refund actions by individual taxpayers pursuant to Revenue and Taxation Code §5140, and plaintiffs were not entitled to preliminary injunctive relief enjoin-

ing county officials from spending funds allegedly collected in violation of the one percent limitation on the taxation of real property established by this section. **Dear v. Alvord**, 101 Cal. App. 3d 480.

SEC. 2. **Valuation of real property.** (a) The full cash value means the county assessor's valuation of real property as shown on the 1975-76 tax bill under "full cash value" or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment. All real property not already assessed up to the 1975-76 full cash value may be reassessed to reflect that valuation. For purposes of this section, the term "newly constructed" shall not include real property which is reconstructed after a disaster, as declared by the Governor, where the fair market value of such real property, as reconstructed, is comparable to its fair market value prior to the disaster.

*Note.--This section constitutes a value enactment by initiative measure. It is not a constitutional revision; does not violate the single subject requirement; the rollback and two-thirds voting requirement for special local taxed do not violate equal protection and the right to travel is not impaired. **Amador Valley Joint Union High School District, et al. v. State Board of Equalization, et al.**, 22 Cal. 3d 208.

(b)The full cash value base may reflect from year to year

EXHIBIT 1

the inflationary rate not to exceed 2 percent for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction, or may be reduced to reflect substantial damage, destruction or other factors causing a decline in value.

(c) For purposes of subdivision (a), the Legislature may provide that the term "newly constructed" shall not include the construction or addition of any active solar energy system.

History.--The amendment of November 7, 1978, corrected to lower case the words "county assessor's" and corrected the spellling of "occurred" in the first sentence; substituted "full cash value" for "tax levels" in the second sentence, and added the third sentence to subdivision (a); and substituted "full cash" for "fair market", substituted "2 percent" for "two percent (2%)", and added the balance of the first sentence of subdivision (b) after "jurisdiction". The amendment, of November 4, 1980, added subdivision (c).

Construction.--The 1978 amendment, which amended this section by specifically providing that acquisition value will be reduced to reflect a decline in real property value, applies retroactively to the 1978-79 fiscal year. **State Board of Equalization v. Board of Supervisors**, 105 Cal. App. 3d 813.

SEC. 3. Changes in state taxes. From and after the effective date of this article, any changes in State taxes en-

acted for the purpose of increasing revenues collected pursuant thereto whether by increased rates or changes in methods of computation must be imposed by an Act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property may be imposed.

SEC. 4. **Imposition of special taxes**. Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County, or special district.

Special Assessments.--Sp»ecial Assessments charged for improvements to individual properties which do not exceed the benefits the assessed properties receive from the improvements are not special taxes within the meaning of this section. **Fresno County v. Malmstrom**, 94 Cal. App. 3d 974.

Fees.--Fees for county services in processing subdivision, zoning, and other land use applications are not special taxes within the meaning of this section where they do not exceed the reasonable cost of providing services necessary to the regulatory activities for which they are charged and are not levied for unrelated revenue purposes. **Mills v. Trinity County**, 106 Cal. App. 3d 656.

SEC. 5. **Effective dates**. This article shall take effect for the tax year beginning on July 1 following the passage of this amendment, except Section 3 which shall become effective upon the passage of this article.

SEC. 6. **Provisions severable.** If any section, part,

clause, or phrase hereof is for any reason held to be invalid or unconstitutional, the remaining sections shall not be affected but will remain in full force and effect.

EXHIBIT 1

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SUPERIOR COURT OF THE
STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

JOSEPH L. DAUTREMONT, et al.,

Case No. 72963

Plaintiffs,

PLAINTIFFS' REPLY BRIEF

vs.

COUNTY OF VENTURA, a Body
Corporate and Politic,

Defendant.

Date: December 21, 1981
Time: 8:30 a.m.
Dept.: 1

STATEMENT OF FACTS

The issue of the revaluation of Plaintiffs' property due to the loss in value occasioned by the burglary has been settled. The Settlement Agreement having been filed with the Court, this Reply Brief will address only the issues of lack of evidence going to unequal taxation and denial of equal protection.

The Court may take judicial notice of that which is common knowledge in the community. That is apparently what the Board of Equalization did, in that nothing was said in the two hearings before that Body on the issue of unequal taxation except in the contest of equal protection. Plaintiffs did, on their two Applications for Changed Assessment, give their opinion of full market value in the amounts of $52,687.35 and $53,822.84. (See Exhibits A-1 and D-1, Plaintiffs' Trial Brief). That opinion evidence is contravened only by the Assessor's opinion which is based only on the sale price of Plaintiffs' home as of February 9, 1978. The Board apparently acknowledged the unequal tax, and in denying Plaintiffs Application relied only upon their lack of jurisdiction to decide the constitutional issue.

> Chairman: " ----- we are powerless to speak to the constitutional questions ----- and the maximum testimony that we can hear relative to the value is confined to strictly the market value approach ---."

TRANSCRIPT OF PROCEEDINGS BEFORE BOARD OF EQUALIZATION OF MARCH 26, 1979. Page 3, lines 19-25, Exhibit "B", Plaintiff's Trial Brief

Thus the Board seems to have foreclosed any evidence other than that going to the then **current market value.** Such evidence, if offered, would have been irrelevant to the constitutional issue presented both to the Board and to this Court.

In its FINDINGS OF FACT AND DECISION, 1978 ASSESSMENT, (Exhibit "C", Plaintiff's Trial Brief) the Board stated:

1. The property had a change of ownership on February 9, 1978.

2. The purchase price of $126,000 was the value of the property on February 9, 1978.

3. Under the provisions of California Constitution Article XIII-A, section 2(a), the Ventura County Assessor properly enrolled the value of the property as of the date of change of ownership.

4. The Board of Equalization does not have the jurisdiction to rule upon the constitutionality of Proposition 13.

Id., at pages 1-2.

In the TRANSCRIPT OF PROCEEDINGS BEFORE BOARD OF EQUALIZATION of

December 10, 1979, the following exchange occurs:

Applicant: "Our objections are in two parts; first of all we object to the assessment on the constitutional grounds that Article XIII, section 2 (a) --- is unconstitutional in that it denies equal protection under the law ---, that is it has created three groups of property owners, the first group that purchased property before 1975 and have no problems; the second group which purchased property after the law was passed --- ; then there was the group in between who purchased property between 1975 and --- the time the law was passed in June, 1978. And these people are being taxed unequally by a law passed after they had taken an action. And this denies us equal protection. And we are being treated unequally with owners of similar property. Our second objection -----."

Id., at page 5, lines 11-27.

Board: "I couldn't agree with you more on your first argument. I don't know if this is the proper forum to decide the Constitutionality of Proposition 13. I doubt that we have that ability. But I think your point is extremely well taken and I would agree with you completely on it. In fact I would even think that the third group who purchased with knowledge that they would be taxed

as opposed to keeping their other house if they indeed had one, still are not being shown equal protection under the law even though they did it with knowledge and forethought. So **obviously their home is probably the same value of those in their vicinity even though they were purchased earlier.**" (emphasis added).

Id., at page 6, line 22, et seq.

Chairman: ------- the fact that you do not have these things in your home does not diminish the **market value**. And this happens in many cases, we have people who are fortunate enough to buy a piece of property at a very reasonable price; however, **in the market** and since it is appraised -- a proposition dealing with **market value** the assessor appraises it within a year --- for more than they actually paid for it. And the fact that you paid for something, a specific price doesn't always mean that that is **market**. ---"

Id., at page 11, lines 11-22.

In the Board's FINDINGS OF FACT AND DECISION, 1979 ASSESSMENT (Exhibit "F", Plaintiffs' Trial Brief), the Board found:

1. The Board of Equalization does not have jurisdiction to rule upon the constitutionality of Article XIII-A of the California Constitution.
2. The Applicant presented no evidence of value

other than the 1978 sale of the subject property.

3. Applying Proposition 8, the assessment of $128,516 was a correct value as of March 1, 1979.

Id., at page 2.

From all of the foregoing it can be clearly seen that there was **no contested issue** as to the inequality of Plaintiffs' tax relative to the tax imposed upon others owning similar property who simply purchased prior to March 1, 1975. The Board acknowledged that fact, and addressed only the issue of their jurisdiction. In any event, the Board made **no finding** that Plaintiffs tax was equal to that of other owners of similar properties.

As the Board of Equalization did before it, this Court is requested to take judicial notice of that which is common knowledge in the community, to wit: that when a tax is imposed based upon a value of property at a specific point in time, that tax may be greatly disparate to a tax based upon a value of that same property at a different point in time. Conversely, two substantially identical properties may have greatly disparate values, and hence tax levies, if one property is valued at one point in time, and the other is valued at a different point in time, and that such is the result of the property tax scheme imposed by Article XIII-A of the California Constitution.

Defendants, in addressing the issue of equal protection, have justifiably relied totally upon **Amador Valley Joint**

Union High School District vs. State Board of Equalization, 1978, 22 Cal 3d 208. The California Supreme Court did address the issue of equal protection in that case. Perhaps because the Court felt the issue to be premature, however, or perhaps because the case was heard and decision rendered in great haste, the majority opinion in that decision raises more questions than it puts to rest.

The linch pin of the Court's decision in **Amador Valley** is the concept of "acquisition value" as opposed to current market value. In disposing of cases alluded to in Defendant's Trial Brief (at page 8, lines 9-22), the Court seemingly **assumed** an intent to change the method of property valuation, for tax purposes, from that of current market value to that of acquisition value. That assumption raises the question of the old Article XIII of California Constitution.

"Unless otherwise provided:

(a) **all** property is taxable and shall be assessed at the **same percentage** of fair market value. When a value standard other than fair market value is prescribed ---, the **same percentage** shall be applied to determine the assessed value. The value to which the percentage is applied, whether it be the fair market value or not, shall be known for property tax purposes as the full value.

(b) **All** property so assessed **shall be taxed in proportion to its full value.**

CALIFORNIA CONSTITUTION, ARTICLE XIII

(emphasis added)

Proposition 13 did not purport to repeal Article XIII. Query: How can the "acquisition value" concept be reconciled with Article XIII?

Clearly, Article XIII allows for a valuation, for tax purposes, other than fair market value. Just as clearly, that Article requires that the same percentage shall be applied to determine assessed value. This is clearly a requirement that all property of a class be assessed at the same percentage of fair market value. If then, property is to henceforth be taxed on an "acquisition value" basis, that acquisition value would seemingly need be a **uniform** percentage of fair market value to comport with Article XIII. If this be so, then the new Article XIII-A would seem to require, in order to effect its purpose of reducing the tax burden on 1975 owners, that property valued at its 1975 value be assessed yearly and the proportion of the 1975 value to current value be determined. That proportion, then, would necessarily need be applied to all properties to be valued at a time subsequent to 1975. Such a scheme, while administratively burdensome, would effect the major purposes of Proposition 13, i. e., to roll back property taxes for those owning property in 1975 and to make property taxes FAIR, EQUAL and within the ABILITY to pay for all Californians. "Inequalities may not be ignored for

the sake of ease of collection." **Stewart Dry Goods Co. v. Lewis** (1935) 294 U.S. 550, 559.

Query: Is it FAIR to require a family who must relocate in order to find work to shoulder twice the burden of his neighbor, who lives in a substantially identical home, for the governmental protections enjoyed equally by all? What is EQUAL in requiring that family to pay twice the tax paid by their neighbor? And how can it be rationally said that Plaintiffs in this case have a greater ABILITY to pay from the sole fact that these Plaintiffs bought in 1978 rather than 1975?

In its rather summary disposition of the line of cases cited by Petitioners in **Amador Valley** (supra, at 235) the California high court acknowledged that the underlying statutes **mandated** taxation on a **current value** basis. Does not Article XIII of our own Constitution mandate such valuation, or **an equal percentage thereof**? If it does not, then it has been universally misread for 130 years.

After adopting the "acquisition value" concept, the California Supreme Court found "reasonable support" for it in a theory that the annual taxes which a property owner must pay should bear some rational relationship to the original cost of the property.

Query: Does such a theory attain the stated goals of Proposition 13? The Court assumed that the person who bought for $40,000 in 1975 would henceforth be assessed

and taxed on that value and that his tax would be fair because his tax would reflect the price he was originally willing and able to pay. (**Amador Valley**, supra, at page 235). The California Constitution, in speaking to property taxation, does **not** refer to **ability** to pay, but rather speaks, in both Article XIII and XIII-A, of fair market value, except that Article XIII-A establishes **two** fair market valuation approaches.

Of greater concern is the person who, in the Court's analogy, bought property in 1977 for $80,000. If we were speaking of a **sales tax**, the analogy is apt. We are speaking here, however, of an annual tax **on property**, and it cannot be said that the person who bought his home in 1977 for $80,000 is better able to pay than the person who, prior to 1975, bought his $40,000 oil well, or office building. If property is to be taxed in California based upon ABILITY to pay, there exist many tried and proven methods of calculating that ability. The necessity of paying, in 1980, $80,000 for a house which could be bought in 1975 for $40,000 is not such a proven method of fairly calculating that ability to pay.

In analogizing the current property tax scheme to sales taxes (**Amador Valley**, supra, at page 236) the Court mentions variable sales prices and discounts. That speaks of a tax imposed **once** on a price paid **at the time of purchase**, however, **not** as is the case with real property, a tax imposed yearly based on a price paid years or decades earlier.

Query: If in fact, as the Court seems to say, property taxes are to bear a relationship to original cost, does that not preclude changes in valuation, both increased and decreased? If that be so, the person who bought a residential lot in 1975 and saw it rezoned for high rise office building in 1980 should pay a tax related to his **original cost**. That cannot be the law; nor is it the practice. "Article XIII, section 1, and 129 years of historical constitutional principles were left unchanged by **express** language of 13." **State Board of Equalization v. Board of Supervisors** (1980) 105 CA 3d 813, 822.

Conversely, the property owner who suffers depreciated property value would be denied relief from a tax imposed relative to his original cost. This result is clearly precluded both by Article XIII and XIII-A.

If, as one is taught in his first year of law school, the Law is a seamless web, how are the gaping holes represented by the questions raised herein to be filled? Are we to await 100 years of tortuous judicial decision to spin them closed? Or do we rather face the frailties of Article XIII-A and either mandate a constitutional construction or strike it down in its entirety, to be resurrected in perhaps equally frail form by another guru of public opinion?

It is respectfully submitted that Article XIII-A can and should be construed in light of the People's intent. That intent was "to **limit the** increase in value." (**State Board**

of Equalization vs. Board of Supervisors, supra, at page 822).

That intent can perhaps best be accomplished by assessing **all** property at the value it had in 1975, and leaving to the Legislature the task of making up new taxing schemes to mitigate shortfalls in revenue.

Alternatively, all properties being taxed in a given tax at their 1975 value could be ratioed to their current market value, and that same ratio could be applied to all other properties.

Other, brighter, minds can and undoubtedly will conceive better alternatives. It is not our intent nor is it our task to impose upon the province of the legislative bodies elected to address such things. "However, if an initiative conflicts with the federal constitution, Judges are duty bound to hold the offending sections unconstitutional." (**Bird, C. J.**, concurring and disserting, **Amador Valley**, supra, at page 248.)

Dated: December 14, 1981

Respectfully submitted,

Frank Anton Gunderson
Attorney for Plaintiffs.

(VERIFICATION -- 446, 2015.5 C.C.P.)
STATE OF CALIFORNIA, COUNTY OF

I am the

in the above entitled action or proceeding; I have read the foregoing

and know the contents thereof; and I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe it to be true.

Executed on
(date) at (place) , California.
I declare, under penalty of perjury, that the foregoing is true and correct.

Signature

PROOF OF SERVICE BY HAND DELIVERY. -
(101.3A, 2015.5 C.C.P.)

STATE OF CALIFORNIA, COUNTY OF VENTURA

I am a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is:
2239 Townsgate Road, Suite 202, Westlake Village, CA 91361
On December 15, 1981, I served the within

Plaintiff's Reply Brief

on the interested parties
in said action, by placing a true copy thereof enclosed in a sealed envelope, with postage thereon fully prepaid, in the United States mail at Ventura, California
addressed as follows:

Dorothy L. Schecter, County Counsel
800 S. Victoria Avenue
Ventura, CA 93009
Attn: Anthony Strauss
Assistant County Counsel

Executed on December 15, 1981 at Westlake Village, California.
I declare, under penalty of perjury, that the foregoing is true and correct.

Signature
Ron Kosloy

2nd Civil No. 65479

IN THE COURT OF APPEAL
SECOND APPELLATE DISTRICT
STATE OF CALIFORNIA

JOSEPH L. DAUTREMONT, JR. AND
DELORES A. DAUTREMONT,
Plaintiffs and Appellants,

vs.

COUNTY OF VENTURA, a Body
Corporate and Politic,
Defendants and Respondents.

APPELLANT'S OPENING BRIEF

Appeal from
Superior Court of Ventura County
Honorable Marvin H. Lewis, Judge

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Attorney for Appellants

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STATUTES

2nd Civil No. 65479

IN THE COURT OF APPEAL

SECOND APPELLATE DISTRICT

STATE OF CALIFORNIA

JOSEPH L. DAUTREMONT, JR. and
DELORES A. DAUTREMONT,
Plaintiffs and Appellants,

vs.

COUNTY OF VENTURA, a Body
Corporate and Politic,

Defendants and Respondents.

STATEMENT OF FACTS

Appellants purchased a single family residence in the City of Simi Valley on February 9, 1978. On June 6, 1978 the people of the State of California adopted the initiative measure known as Proposition 13 adding Article XIIIA to the California Constitution. The effect of Article XIIIA was to limit the value of real property in the State of California for taxation purposes to its value as shown on the

1975-76 tax bill or thereafter to the appraised value of the property when purchased or newly constructed. [Cl tr., pg. 112, line 27-pg. 113, line 12].

The effect of section 2(a) of Article XIIIA is to create, for the purposes of taxation, two classes of property owner: those who took title prior to March 15, 1975, and those who took title after March 1, 1975. [Cl tr., pg. 58, line 8 11].

Subsequent to receipt of their tax bill for the tax years 1978-1979 and 1979-1980, Appellants timely filed Application for changed assessment. [Cl tr., pg. 6 and 9]. These Applications were made on grounds, so far as is relevant here, of unequal protection under the law. The full cash value of Appellant's house, as established by Appellants, based upon the 1975-1976 tax bill, and increased by 2% per year, was $56, 774.63 and $57,910.12 for the 1978-1979 and 1979-1980 tax years, respectively. [Cl. tr., pg. 11].

Decision denying the Applications and Findings of Fact were rendered in which the Board of Equalization disclaimed jurisdiction over the constitutional question. [Cl. tr., pg. 27 and 33]. The Board of Equalization also found the assessment, based upon the 1978 sale price as increased at 2% per year as mandated by Article XIIIA, to be $126,000.00 and $128,516.00 for the tax years 1978-1979 and 1979-1980 respectively. [Cl. tr., pg. 27 and 34]. This suit followed.

Appellants suit was based upon a clear issue of law, contending that imposition upon them of a tax greatly in excess of that imposed upon similarly situated owners of similar property results in unconstitutional lack of equal protection under the law. [Cl. tr., pg. 60].

Judgment for Defendants was rendered January 14, 1982 by the Honorable Marvin H. Lewis. [Cl. tr., pg. 146 and 147].

This Appeal followed.

CONTENTIONS

Appellants contend on appeal, as they did below, that Article XIIIA of the Constitution of the State of California deprives them of equal protection under the law, as guaranteed them by the Constitutions of the State of California and the United States.

ARGUMENT

I

A STATE'S RIGHT TO TAX AND MAKE CLASSIFICATION PURSUANT TO THAT RIGHT IS LIMITED BY THE EQUAL PROTECTION CLAUSE OF THE UNITED STATES CONSTITUTION.

"The Fourteenth Amendment forbids the states to deny to any person within their jurisdiction the equal protection of the laws." **Western Southern Life Insurance Co. v. State Board of Equalization,** (1981) 451 U.S. 648, 656-657, 101 S. Ct. 2070, 68 L. Ed. 2d 514, 523,

In **Kahn v. Shevin,** (1974) 416 U.S. 351, 355-356, 94 S.Ct. 1734, 40 L.Ed.2d 189, the court stated: "Where Taxation is concerned and no specific federal right, **apart from Equal Protection** is imperiled, the states have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation. A state tax law is not arbitrary, although it discriminates in favor of a certain class if the discrimination is founded upon a reasonable distinction, or difference in state policy not on conflict with the federal Constitution." (emphasis added) The Court in **Kahn v. Shevin,** (1974) 416 U.S. 351, 355-356, 94 S.Ct. 1734, 40 L.Ed.2d 189, overturned the disputed tax law saying that the discrimination was not justified. Even though the court recognized the states' large leeway in making laws it also acknowledged that these bounds can be overreached, nullifying the law, and that the taxing laws must meet the requirements of the federal constitution.

In **Southwest Oil Co. v. Texas,** (1910) 217 U.S. 114, 124, 30 S.Ct. 496, 54 L.Ed. 688, the court said "A state may in its wisdom classify property for purposes of taxation, and the exercise of its discretion is not to be

questioned in a court of the U.S., **so long as the classification does not invade rights secured by the Constitution of the U.S.**" (emphasis added). Since equal protection under the law **is** a right secured by the Constitution, the taxing law must stay within the parameters of the constitutional rights secured by the Equal Protection Clause of the Fourteenth Amendment.

"The Equal Protection Clause of the Fourteenth Amendment protects the individual from state action which selects him out for discriminatory treatment by subjecting him to taxes not imposed on others of the same class. The right is the right to equal treatment. The constitutional requirement is not satisfied if a state does not itself remove the discrimination, but imposes on him against whom the discrimination has been directed the burden of seeking an upward revision of the taxes of other members of the class." **Hillsborough v. Cromwell**, (1946) 326 U.S. 620, 623, 66 S. Ct. 445, 90 L.Ed. 358. The state of California in applying Article XIIIA has selected Appellants out for discriminatory treatment by subjecting them to taxes not imposed on others of the same class.

II

ARTICLE XIIIA HAS EFFECTIVELY CREATED A GRANDFATHER CLAUSE WHICH IS NOT APPLICABLE TO TAXATION OF RESIDENTIAL PROPERTY, AND WHICH HAS CREATED AN INEQUITABLE RESULT, AND WHICH IS ARBITRARY AND IRRATIONAL AND THEREFORE INVALID

The Court in **United States Steel Corp. v. Public Utilities Commission**, (1981) 29 Cal.3d 603, 612-613, 629 P.2d 1381, 175 Cal.Rptr. 169, stated: "While Grandfather Clauses have been upheld in a variety of statutes, **legislation that favors existing business must have a reasonable relation to the public interest**. Where a Grandfather Clause does not appear to relate to the public interest the Statute may offend constitutional protection against arbitrary classification." (emphasis added).

"The purpose of the Grandfather Clause is to give those engaged in a business being brought under regulation the right to continue their existing business without being subjected to certificaion requirements that would be applicable if the business were then being started for the first time." **Golden Gate Scenic Steamship Lines, Inc. v. Public Utilities Commission**, (1962) 57 Cal.2d 373, 379; 369 P.2d 257, 19 Cal.Rptr. 657.

"A Grandfather Clause is one in which a particular year

is chosen as the effective date of new legislation in order to prevent inequitable results, or to promote some other legitimate purpose." **Harris v. Alcoholic Beverage Appeals Board**, (1964) 61 Cal.2d 305, 309-310, 392 P.2d 1, 38 Cal.Rptr. 409.

Article XIIIA, in choosing an arbitrary effective date, has created an analog to a Grandfather Clause. By definition, however, a Grandfather Clause refers to a business or profession, to the end that such business or profession not be affected severely by new regulation or taxation. It would thus seem that the legislature, or indeed the voters, cannot rely upon a Grandfather Clause rationale for the inequitable result of Article XIIIA. Even if such a rationale were in the first place proper, there is, and can be, no showing by the legislature that the use of such a Grandfather Clause rationale in this instance would avoid inequitable results. Further, there has been no showing that the Grandfather Clause rationale in this case bears any reasonable relation to the public interest. The date chosen for this new legislation **causes** unequitable results, by reducing taxes to some of a class while increasing taxes to others of the same class. The legislation cannot, then, be said to fairly promote any legitimate purpose.

The Court in **Harris v. Alcoholic Beverage Appeals Board**, (1964) 61 Cal.2d 305, at 309, stated: "Creating a so called Grandfather Clause creates a current and undesirable nonuniformity in the legislative scheme of regulation, and perpetuation thereof -- would defeat the ulti-

mate legislative objective." Article XIIIA's arbitrary cut-off date also creates a current and undesirable nonuniformity in the legislative scheme, which defeats the ultimate legislative objective, as stated in the Voters Pamphlet, of fair and equal taxation, and it should be declared void and invalid.

III

THE LEGISLATION LACKS UNIFORMITY AND EQUALITY WITHIN THE CLASS, IS THEREFORE ARBITRARY AND IRRATIONAL, AND INVALID

The Court in **Greene v. Louisville and Interurban R.R. Co.**, (1917) 244 U.S. 499, 515-516, 37 S.Ct. 673, 61 L.Ed. 1280, stated: "Taxing by a uniform rule requires uniformity not only in the rate of taxation, but also uniformity in the mode of the assessment upon the taxable valuation. Uniformity in taxing implies equality in the burden of taxation, and this equality of burden cannot exist without uniformity in the mode of assessment, as well as in the rate of taxation. It is equally plain that it makes no difference what basis of valuation may be adopted, provided it be applied to all alike." And in **Louisville Gas & Electric Co. v. Coleman** (1928) 277 U.S. 32, 37, 48 S.Ct. 423, 72 L.Ed. 770, the court stated: "The Equal Protection Clause means that the rights of all persons must rest upon the same rule under similar circumstances, and that it ap-

plies to the exercise of all the powers of the state which can affect the individual or his property, including the power of taxation." In **Walter v. St. Louis**, (1954) 347 U.S. 231, 237, 74 S.Ct. 505, 98 L.Ed. 660, the court stated: "The legislature in its discretion may tax all, or it may tax one or some, taking care to accord to all in the same class equality of rights." In **Hopkins v. Southern Calif. Tel. Co.** (1928) 275 U.S. 393, 403, 48 S.Ct. 180, 72 L.Ed. 329, the court stated: "The Fourteenth Amendment protects those within the same class against unequal taxation, all are entitled to like treatment." And in **Southwest Oil Co. v. Texas**, (1910) 217 U.S. 114, 123-124, 30 S.Ct. 496, 54 L.Ed. 688, the court stated: "There can be no discrimination in favor of one against another of the same class. The rule of equality requires the same means and methods to be applied impartially to the constituents of each class so that the law shall operate equally and uniformly upon all persons in similar circumstances. And in **Stebbins v. Riley**, (1925) 268 U.S. 137, 142, 45 S.Ct. 424, 69 L.Ed. 884, the court stated: "The Fourteenth Amendment prescribes that the law have the attribute of equality of operation, and equality of operation does not mean indiscriminate operation on persons merely as such, but on persons according to their relations. In some circumstances it may not tax A more than B, but if A be of a different trade or profession than B, it may."

Article XIIIA, Section 2, by treating similar owners of similar proprty differently for assessment purposes has deprived them of equality of taxation. Similarly situated residential property owners are being assessed at vastly different values, and as a result their rate of taxation is much greater than that of others identically situated, owning substantially identical property. Since these Appellant owners of similar property are in the same class of property owners, i.e., single family residences, the equal protection clause of the United States Constitution and the California Constitution guarantees them equal taxation relative to others in the same class. Article XIIIA, Section 2, does not act equally and uniformly upon all persons similarly situated and is, therefore, arbitrary and irrational.

The tax law has been struck down in other cases, based on the Equal Protection Clause, where there was unequality within the class. In **Raymond v. Chicago Union Traction Co.**, (1907) 207 U.S. 20, 37-38, 28 S.Ct. 7, 52 L.Ed. 78, the court stated: "The most important function of the board, that of equalizing assessments in order to carry out the provisions of the Constitution of the State in levying a tax by valuation so that every person shall pay a tax in proportion to the value of his or her property, was in this instance omitted and ignored. It is not a question of mere difference of opinion as to the valuation of property, but it is a question of difference of method in the man-

ner of assessing property of the same kind." (emphasis added).

Even where the court has upheld the tax law attacked on Equal Protection Clause grounds, they have done so because the taxpayers were not similarly situated. In **State Tax Commissioner v. Jackson**, (1931) 283 U.S. 527, 537-538, 51 S.Ct. 540, 75 L.Ed. 1248, the court stated: "Our duty is to sustain the classification adopted by the legislature if there are substantial differences between the occupations separately classified." In **Walter v. St. Louis**, (1954) 347 U.S. 231, 235, 74 S.Ct. 505, 98 L.Ed. 660, the court stated: "We cannot say that a difference in treatment of the taxpayers deriving income from these different sources is per se a prohibited discrimination. There is not so much similarity between them that they must be placed in precisely the same classification for tax purposes."

Based on these cases it is apparent that the courts look to see if taxpayers who are similarly situated are being treated equally, and where it is determined they are not the classification is held arbitrary and therefore invalid. In the instant case, taxpayers who own the same type of land, i. e., a dwelling house, in the same area, and of the same value, are being treated differently solely on the basis of purchase date. Because Article XIIIA Section 2 does not treat these similarly situated taxpayers equally, the classi-

fication should be struck down as arbitrary, irrational and discriminatory.

As the court said in **Stewart Dry Goods v. Lewis**, (1935) 294 U.S. 550, 560, 55 S.Ct. 525, 79 L.Ed. 1054: "It is difficult to be just, and easy to be arbitrary. If the state desires to tax - - - it must take the trouble equitably to distribute the burden of the tax. Gross inequalities may not be ignored for the sake of ease of collection." The state, in choosing the 1975 lien date as the cutoff date, has done so to ease its own burden, and has failed to equitably distribute the burden of the tax on the property owners of the state.

In **Clark v. Titusville**, (1902) 184 U.S. 329, 333, 22 S.Ct. 382, 46 L.Ed. 569, the court said: "The fourteenth amendment requires that the law imposing the tax operate on all alike under the same circumstances."

In **Gutkneckt v. Sausalito**, (1974) 43 Cal.App.3d 269, 278, 117 Cal.Rptr. 782, the court stated: "A valid classification for revenue purposes must be based on natural distinctions inherent in the class and these distinctions must be reasonably related to the object of the legislation." Therefore, the equal protection clause of the Fourteenth Amendment of the United States Constitution applies to protect appellants from unequal taxation, and they are not being treated similarly to other members in the class, there being no natural distinctions inherent in these similarly situated property owners. Therefore, these

members of the same class, i.e., single family residential property owners, must be taxed equally as their similarly situated brethren.

IV

THIS CLASSIFICATION DOES NOT HAVE A FAIR AND SUBSTANTIAL RELATION TO ITS PURPOSE, AND IS THUS INVALID

"The Classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike". **Royster Guano Co. v. Virginia**, (1920) 253 U.S. 412, 415, 40 S.Ct. 560, 64 L.Ed. 989. This rule has been quoted in many cases dealing with classifications alleged to be violative of the Equal Protection Clause: (**U.S. RR Retirement Board v. Fritz**, (1980) 449 U.S. 166, 101 S.Ct. 453, 459, 66 L.Ed.2d 368; **Louisville Gas & Electric Co. v. Coleman**, (1928) 277 U.S. 32, 37, 48 S.Ct. 423, 72 L.Ed. 770; **Ohio Oil Co. v. Conway**, (1930), 281 U.S. 146, 160, 50 S. Ct. 310, 74 L.Ed. 775; **Allied Stores v. Bowers**, (1959) 358 U.S. 522, 527, 79 S.Ct. 437, 3 L.Ed.2d 480; **Haman v. County of Humboldt**, (1973) 8 Cal.3d 922, 926-927, 506 P.2d 993, 106 Cal.Rptr. 617).

The court in **Louisville Gas & Electric Co. v. Coleman**, (1928) 277 U.S. at 37, stated that "Mere differences are not enough, the attempted classification must always rest upon some difference which bears a reasonable and just relation to the action in respect to which the classification is proposed and can never be made arbitrarily and without any such basis." The court there struck down the tax law as not meeting the test of **Royster Guano Co. v. Virginia** (1920) 253 U.S. 412, 415, 40 S.Ct. 560, 64 L.Ed. 989, because of the similarity of the classification, stating that their differences were insignificant.

"'[W]hen, as here, the enactment follows voter approval, the ballot summary and arguments and analysis presented to the electorate in connection with a particular measure may be helpful in determining the probable meaning of uncertain language'." **State Board of Equalization v. Board of Supervisors**, (1980) 105 Cal.App.3d 813, 821.

"In the official title and summary of the voters pamphlet prepared by the Attorney General, the entire valuation question was presented in two sentences: '[E]stablishes 1975-76 assessed valuation base for property tax purposes. Limits annual increases in value.'

The analysis by the legislative analyst discussed the valuation matter as follows: '[t]he adjusted values could then be increased by no more than 2 percent per year as long as the same taxpayer continued to own the property.'

The arguments in favor of 13 contained the following clause: '[L]imits yearly market value tax raises to 2% per year'.

The rebuttal to argument against 13 stated: 'Proposition 13 will make property taxes FAIR, EQUAL, and within the ABILITY to pay for all Californians'.

A complete reading of the voters pamphlet fails to reveal how the electorate intended to relinquish the established constitutional guaranty in providing for taxation on **fair market value**. They merely voted to limit the increase in the value under certain stated circumstances. Article XIII, Section 1, and 129 years of a historical constitutional principle were left unchanged by the **express** language of 13." **State Board of Equalization v. Board of Supervisors**, 105 Cal.App.3d at 821-822.

Article XIIIA, too, must meet the test of reasonableness in classification, and must not treat similarly situated people dissimilarly. This would seem an impossible burden for the taxing authority to meet, because taxpayers with substantially identical homes built at substantially the same time are being assessed at vastly different rates. There is not here even a "mere difference" as to these dissimilarly taxed taxpayers, and therefore the classification must fail.

The court in **Royster Guano Co. v. Virginia**, (1920) 253 U.S. at 415-416 in striking down the tax statute as

violative of the Equal Protection Clause stated: "A discriminatory tax law cannot be sustained against the complaint of a party aggrieved if the classification appears to be altogether illusory. It is obvious that the ground of difference upon which the discrimination is rested has no fair or substantial relation to the proper object sought to be accomplished by the legislation. It follows that it is arbitrary in effect and none the less because it is probable that the unequal operation of the taxing system was due to inadvertence rather than design." The court in **Southern Railway Corp. v. Greene**, (1910) 216 U.S. 400, 412, 30 S.Ct. 287, 54 L.Ed. 536; stated: " - - - that Equal Protection of the Laws means subjection to equal laws, applying alike to all in the same situation." The Court in **Ohio Oil Co. v. Conway**, (1930), 281 U.S. at 160, said "the state is not at liberty to resort to a classification that is palpable or arbitrary." The court in **Allied Stores v. Bowers**, (1959) 358 U.S. at 528, though upholding the law, stated "For a statute to be valid if it discriminates it must be 'founded upon a reasonable distinction, or difference in state policy.' "

The classifications created by Article XIIIA in subjecting similarly situated people to different levels of taxation, and the law having no substantial relation to the object of the legislation, i.e., to provide fair and equal and affordable tax treatment to property owners by limiting the

increase in value, can therefore be said to be illusory. Since the classifications are illusory, and there being no reasonable distinction between the alleged classes or a valid difference in state policy the law is arbitrary and violative of both the United States and California Constitutions and is therefore invalid as to these Appellants.

V

A DISCRIMINATORY TAX CAN BE VALID ONLY IF THERE IS SOME REASONABLE DIFFERENTIATION FAIRLY RELATED TO THE OBJECT OF THE LEGISLATION.

The court in **United States Steel Corp. v. Public Utilities Comm.**, (1981) 29 Cal3d 603, 611-612, 629 P.2d 1381, 175 Cal.Rptr. 169, stated the applicable test for equal protection analysis in California: "The Constitutional bedrock upon which all equal protection analysis rests is composed of the insistance upon a rational relationship between selected legislative ends and the means chosen to further or achieve them. This precept, and the reasons for its existence, have never found clearer expression than the words of Justice Robert Jackson, uttered 30 years ago. 'I regard it as a salutary doctrine', Justice Jackson stated, 'that cities, states and the Federal Government must exercise their power so as not to discriminate

between their inhabitants except upon some reasonable differentiation fairly related to the object of regulation. This equality is not merely abstract justice. The framers of the Constitution knew, and we should not forget today, that there is no more effective practical guaranty against arbitrary and unreasonable government than to require that the principles of law which officials would impose upon a minority must be imposed generally. Conversely, nothing opens the door to arbitrary action so effectively as to allow those officials to pick and choose only a few to whom they will apply legislation, and thus to escape the political retribution that might be visisted upon them if larger numbers were affected. Courts can take no better measure to assure that laws will be just than to require that laws be equal in operation. (**Railway Express v. New York**, (1949) 336 U.S. 106, 112-113, 69 S.Ct. 463, 93 L.Ed. 533 (Jackson J. Conc.).' " Therefore, even under California law, the classification must be found to rest upon "some reasonable differentiation fairly related to the object of the legislation." **United States Steel Corp. v. Public Utilities Comm.**, (1981) 29 Cal3d at 612.

For Article XIIIA to pass muster under the Equal Protection Clause it must, then, be shown that there is a reasonable differentiation between these similarly situated taxpayers, and that this differentiation is fairly related to the one paying higher taxes on similar property, when the object of the legislation is to provide for fair and equal (and affordable) tax treatment of property owners.

This is a very difficult burden where identical, previously valued, homes are taxed at vastly different rates. Article XIIIA is in violation of the Equal Protection Clause because it cannot meet this test as stated by the California Supreme Court as recently as 1981, and should be declared invalid and void.

The Court in **Lehnhausen v. Lake Shore Auto Parts Co.**, (1973) 410 U.S. 336, 359, 93 S.Ct. 1001, 35 L.Ed.2d 351 said: "The test is whether the difference in treatment is an invidious discrimination." The court in **Concordia Ins. Co. v. Illinois**, (1934) 292 U.S. 535, 547, 54 S.Ct. 830, 78 L.Ed. 1411, stated: "Substantial Equality and fair equivalence are important factors in determining the presence or absence of arbitrary discrimination" in these situations. And in **Louisville Gas & Electric Co. v. Coleman**, (1928) 277 U.S. 32, 37-38, 48 S.Ct. 423, 72 L.Ed. 770, the court said "Discriminations of an unusual character especially suggest careful consideration to determine whether they are obnoxious to the constitutional provisions." The court in **Thomas v. Kansas City**, (1923) 261 U.S. 481, 483, 43 S.Ct. 440, 67 L.Ed. 758, stated: [The states] "action can be assailed if it is palpably arbitrary or discriminatory." The court in **Stebbins v. Riley**, (1925) 268 U.S. 137, 142, 45 S.Ct. 424, 69 L.Ed. 884, stated: "The taxing statute may make a classification for purposes of fixing the amount or incidence of the tax, provided that all persons subject to such legislation within the

classification are treated with equality and provided further that the classification itself be rested upon some ground of difference having a fair and substantial relation to the object of the legislation."

The court in **Schwerken v. Wilson**, (1981) 450 U.S. 221, 101 S.Ct. 1074, 1083, 67 L.Ed.2d 186, stated: "As long as the classificatory scheme chosen by congress rationally advances a reasonable and identifiable government objective we must disregard the existence of other methods of allocation that we, as individuals, perhaps would have preferred." The court hers is suggesting a higher level of review, saying the government must show a **reasonable and identifiable** government objective. The state cannot do that in this case because there can be no valid reason for treating similarly situated taxpayers in such a vastly different manner.

Article XIIIA in taxing similarly situated taxpayers differently lacks substantial equality and fair equivilance and therefore there is strong evidence of an arbitrary classification, discriminatory in nature. Since there is no difference at all between taxpayers taxed at different levels this is a discrimination of an unusual character, and it must be determined carefully if it is in violation of the Equal Protection Clause. Since the tax is not the same in respect to similarly situated taxpayers, and no rational relation is shown for a reasonable and identifiable governmental objective, it is arbitrary and discriminatory and violative of

the Equal Protection Clauses of both the U.S. and California Constitutions and is therefore void as to Appellants' class.

VI

THERE MUST BE A SERIOUS AND GENUINE JUDICIAL INQUIRY INTO THE RELATION BETWEEN THE CLASSIFICATION AND ITS PURPOSE

The Court in **United States Steel Corp. v. Public Utilities Comm.**, (1981) 29 Cal.3d 603, 612, stated: "It is with these principles [The Equal Protection Clause test] firmly in mind that we have undertaken to assess the classification here before us. Then so doing our function is, as we have recently indicated, to conduct a serious and genuine judicial inquiry into the correspondence between the classification and the legislative goals." In **Cooper v. Bary**, (1978) 21 Cal.3d 841, 848, 582 P.2d 604; 148 Cal.Rptr. 148 it was said: "Minimal Scrutiny requires the court to conduct a serious and genuine judicial inquiry into the correspondence between the classification and the legislative goals." The court in **Quaker City Cab Co. v. Penna**, (1928) 277 U.S. 389, 394, 48 S.Ct. 553, 72 L.Ed. 927, in discussing the Equal Protection Clause stated: "The basic idea is to protect taxpayers from unfair and ar-

bitrary classifications and discriminations."

Based on these cases, under even the lowest level of review of an Equal Protection Clause issue, the court must make a serious and genuine judicial inquiry into the means used to achieve the legislative goals. In the instant case, the court in so doing must recognize that the goals were to achieve fair and equal, as well as affordable, tax treatment for taxpayers. Article XIIIA does not accomplish this result except as to one of the classes it has created under this amendment, i.e., those who took title prior to the 1975 lien date. The other classes, those who took title after that lien date but before the election, and those who took title after both those events, and who own similarly situated property, are paying a much higher tax. Therefore the means used do not accomplish the only stated goals of the legislation and the Article should be held invalid. This closed class is further evidence of the inequality of this law, and since it is a large closed class there must be a valid reason for the classification other than administrative convenience alone.

VII

THE SYSTEMATIC AND INTENTIONAL UNDERVALUATION OF SIMILAR PROPERTY VIOLATES THE RIGHT TO EQUAL PROTECTION OF THOSE TAXED ON THE FULL VALUE OF THEIR PROPERTY

"An Intentional undervaluation of a large **class** of property when the law enjoins assessment at true value, is necessarily designed to operate unequally upon other **classes** of property - - -. By uniformly undervaluing certain **classes** of property, the assessment - - -of other **classes of property at the full value - - - makes the whole assessment, considered as one judgment, a fraud upon the fully assessed property." (emphasis added). Greene v. Louisville and Interurban R.R. Co.**, (1917) 244 U.S. 499, 518, 37 S.Ct. 673, 61 L.Ed. 1280.

[And] "it must be regarded as settled that intentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property." **Cumberland Coal Co. v. Board**, (1931) 284 U.S. 23, 28, 52 S.Ct. 48, 76 L.Ed. 146; **Sioux City Bridge v. Dakota County**, (1923) 260 U.S. 441, 445 S.Ct. 190, 67 L.Ed. 340.

Again in **Cumberland Coal v. Board**, (1931) 284 U.S. at 29 the court said "the fact that a uniform percentage of assigned values is used cannot be regarded as important if, in assigning the values to which the percentage is applied, a system is deliberately adopted which ignores differences in actual values." In that case the law was held invalid where a group of taxpayers were being assessed at twice the value of other taxpayers owning the same class of property. The court also stated that in this situation the taxpayer has a right to "have his assessment reduced to the percentage of that value of which others are taxed."

Article XIIIA when it was first implemented in 1978 taxed all property owned **prior** to March 1, 1975 at less than full value on that date of implementation, and taxed all property acquired after March 1, 1975 at its acquisition value. Appellants, having bought their property in February, 1978 were taxed at its full value in 1978 while all those who acquired similar property prior to March 1, 1975 were taxed at less than the property's full value. In a system which deliberately ignores the actual value the paramount consideration is not merely that there be a uniform **tax rate** based upon assessed value, but that the assessed value of the property be uniform as well. Where, as here, taxpayers owning the same class of property, similarly situated, are taxed at different proportionate values of that property, there is a systematic and inten-

tional under-valuation that is repugnant to Equal Protection Clause of the Constitutions of the United States and California, and as such is invalid and void.

VIII

TAXATION OF SIMILARLY SITUATED PROPERTY AT DIFFERENT RATES DUE TO DIFFERENT VALUATION RESULTS IN UNDER-VALUATION.

"The Constitution requires not only that all nonexempt property be taxed, but - - -, [that] all property be assessed by the same standard of valuation." **DeLuz Homes Inc. v. County of San Diego,** (1955) 45 Cal.2d 546, 562, 290 P.2d 544. In **Mahoney v. City of San Diego,** (1926) 198 Cal.388, 400-402, 245 P.189, the court held that it was an error for the board of equalization to value similar property at different standards.

"Where it is impossible to secure both the standard of the true value, and the uniformity and equality required by law, **the latter requirement is to be preferred as** the just and ultimate purpose of the law." (emphasis added). **Cumberland Coal Co. v. Board,** (1931) 284 U.S. 23, 29 52 S.Ct. 48, 76 L.Ed. 146; and in **Louisville & N.R. Co. v. Public Services Commission,** (1978) 493 F.Supp. 162, 168, the court stated that "A reasonable effort must be

made to maintain fair valuations for the assessments of all property."

In **Birch v. County of Orange**, (1921) 186 Cal. 736, 741, 200 P.647, the court in holding the tax law void stated: "The taxpayer is entitled to the exercise of good faith and fair consideration on the part of the taxing power in assessing his property, at the same rate and on the same basis of valuation as that applied to other property of like character and similarly situated. Inequality of taxation is produced as surely by inequality of valuation as by inequality of the rate of tax."

Appellants in owning property similarly situated to others on which a greatly reduced tax is paid, due to the difference in valuation of the properties, suffer due to that undervaluation of those properties. Since inequality of valuation produces the same inequality as produced by inequality of the tax rate these taxpayers are being denied the equal protection under the law. As Appellants' property is under-valued as compared to other similarly situated properties, there results a lack of uniformity and equality within the law and classification. To the extent this lack of uniformity and equality within the law and classification is due to Article XIIIA, that Article must fall.

IX

PRIOR ANALYSIS OF ARTICLE XIIIA WAS NOT A SERIOUS AND GENUINE REVIEW OF THE EQUAL PROTECTION ISSUE AS TO APPELLANTS AND SHOULD NOT BE VIEWED AS CONTROLLING AUTHORITY IN THIS CASE

The Court in **Amador Valley Joint Union High School District v. State Board of Equalization**, (1978) 22 Cal.3d 208, 219, 583 P.2d 1281, 149 Cal.Rptr. 239, stated: "Our sole function is to evaluate Article XIIIA legally in the light of established constitutional standards. We further emphasize that we examine only those principal, fundamental challenges to the validity of Article XIIIA **as a whole**. In doing so we reaffirm and readopt an analytical technique previously used by us in adjudicating attacks upon similar enactments in which **analysis of the problems which may arise** respecting the interpretation or application of particular provisions of the Act **should be deferred for future cases in which those provisions are more directly challenged.**" (emphasis added). The court therein expressly stated that only the Article as a whole was addressed. Particular provisions of the Article were not to be addressed until specifically challenged. This is that challenge. Section 2(a) of Article XIIIA

causes an invidious and discriminatory tax to be imposed upon these Appellants, and these Appellants desire their genuine and serious review of the issue of equal protection under Section 2 of Article XIIIA of the Constitution of the State of California.

The court in **Amador Valley Joint Union High School District v. State Board of Equalization,** (1978) 22 Cal.3d at 233, further stated: "Preliminarily we note that **petitioners equal protection challenge is premature**. As a general rule, courts will not reach constitutional questions unless absolutely necessary to a disposition of the case before them, and we could decline to consider the issue in the abstract and instead await its resolution within the framework of an actual controversy wherein the disparity is pivotal. Nevertheless, we have **elected** to treat the Equal Protection Issue as constituting an attack upon the face of the article itself, because the assessors throughout this state must be advised whether to follow the new assessment procedure. As will appear, we will conclude that the essential demands of Equal Protection are satisfied by a rational basis underlying Section 2 of the new article." (emphasis added).

Having thus "elected" to treat a "premature challenge", the Court found that the "essential" demands of Equal Protection **as to the whole** of Article XIIIA were met. The Court dealt with the issue rather summarily, however, as perhaps befits a gratuitous analysis of a premature chal-

lenge. The Court must, however, herein "conduct a serious and genuine judicial inquiry into the correspondence between the classification and the legislative goals." **U.S. Steel Corp. v. Public Utilities Comm.**, (1981) 29 C.3d at 612. That inquiry must address this specific issue: Does Article XIIIA, in requiring these Appellants to pay a vastly greater tax on their home, relative to other homeowners indistinguishable from them but for a difference in purchase date, satisfy **all** the requirements of Equal Protection udner the law as guaranteed by the Constitutions of the United States and California?

No mention of this classification, or of Appellants' class is made in the Court's opinion in **Amador Valley Joint Union High School District v. State Board of Equalization. Amador Valley** thus should not be viewed as controlling in this case.

X

A PROPER ANALYSIS OF THE EQUAL PROTECTION CLAUSE DOES NOT SUPPORT THE CLASSIFICATION SCHEME OF ARTICLE XIIIA

The Court in **Amador Valley Joint Union High School District v. State Board of Equalization,** (1978) 22 Cal.3d at 234 stated: "So long as a system of taxation is supported by a rational basis, and is not pal-

pably arbitrary, it will be upheld despite the absence of a precise, scientific uniformity of taxation." This is arguably a correct statement of a **standard** to be applied to the analysis under equal protection, although it ignores the test articulated in **Schwerken v. Wilson,** (1981) 450 U.S. 221, 101 S. Ct. 1074, 1083, 67 L.Ed. 2d 186, which requires a rational advancement of a reasonable and identifiable government objective. (See infra, page 21). As used by the Court in **Amador Valley**, it is a conclusion that the statute is valid; it is the end result of the analysis. It is **not** the rigorous analysis demanded by the equal protection clause of the United States Constitution.

As the Court stated in **United States Steel Corp. v. Public Utilities Comm.**, (1981), 29 Cal.3d at 611-612: "The constitutional bedrock upon which all equal protection analysis rests is composed of the insistence upon a rational relationship between selected legislative ends and the means chosen to further or achieve them." The Court then stated the test as being that the "classification be found to rest upon some reasonable differentiation fairly related to the object of regulation." The court in **Amador Valley** did not utilize this test, and did not analyze the means chosen to achieve the ends promised for Article XIIIA. No attempt was made in **Amador Valley** to rest the classification scheme of Article XIIIA upon some reasonable differentiation fairly related to the object of Article XIIIA, nor was any attempt made to identify a reasonable goverment objective to which the classification scheme could be related.

The Court in **Amador Valley** further stated: "Section 2 does not unduly discriminate against persons who acquired their property after 1975, for those persons are assessed and taxed in precisely the same manner as those who purchased in 1975." The court therein compared the **1975** purchaser with the **post 1975** purchaser, and concluded that Article XIIIA is constitutional as to those classes.

The Court in so concluding, however, neglected not only the fact that Article XIII, Section 1 of the California Constitution still requires taxation of property to be at a uniform proportion of its fair market value, but also neglected to consider the disparity between the tax paid by Appellants' class and that paid by those who owned their property **before** March 15, 1975. When that comparison is made, how can there be a "reasonable differentiation" drawn between the owner of a residence, be it palace or hovel, who happened to take title prior to March 15, 1975 and the owner of the same residence who happened to take title after that arbitrary date? The date of purchase, per se, has only a minimal, if any effect upon the value of the property, other than to affirm it as of that date. Neither can the date of purchase be a reasonable measure of benefits derived, nor can it reliably measure ability to pay.

The Court in **Amador Valley Joint Union High School District v. State Board of Equalization,** (1978) 22 Cal.3d at 236, states: "The selection of the

1975-76 fiscal year as a base year, although seemingly arbitrary, may be considered as comparable to utilization of a "grandfather clause" wherein a particular year is chosen as the effective date of new legislation, in order to prevent unequitable results or to promote some other legitimate purpose."

The court there misapplied the rationale of the "Grandfather Clause." In **Golden Gate Scenic Steamship Lines, Inc. v. Public Utilities Comm.**, (1962) 57 Cal.2d 373, 379, 369 P.2d 257, 19 Cal.Rptr. 657, the court stated: "The purpose of the "Grandfather Clause" is to give those engaged in a business being brought under regulation the right to continue their existing business without being subjected to certification requirements that would be a applicable if the business were then being started for the first time." Based on that pronouncement, the term, and rationale of, "Grandfather Clause" applies to regulation of business, and its policy is to prevent existing businesses from suffering from increased regulation. That rationale, and hence the rule, does not automatically apply to the roll back of property valuation for some California taxpayers to March 1975 values, while leaving the remainder to suffer the burdens of inflated property values, and hence disparate taxes, and at the same time to bear the cost burden of providing the benefits of an increasingly costly sovereignty to those same beneficiaries of the roll back. The analogy to "Grandfather Clause" is **not** the analysis ---

it is, if sought to be used for any purpose in this case, only the raison d'etre for a rigorous analysis of the rationale for its application to this case.

XI

ARTICLE XIIIA SECTION 2 AS IT IS APPLIED TO APPELLANTS IS IN CONFLICT WITH ARTICLE XIII OF THE CALIFORNIA CONSTITUTION

The Court in **State Board of Equalization v. Board of Supervisors**, (1980) 105 Cal.App.3d 813, 820-822, 164 Cal.Rptr. 739, stated: "The board, by its ruling, seeks to alter 129 years of constitutional law. The people of California, since 1849, have relied upon the principle that all property in this state shall be taxed in proportion to its value, to be ascertained as directed by law - - -. A basic rule of construction provides that constitutional amendments must, if at all possible, be interpreted in harmony with other relevant portions of the Constitution - - -. 'All property so assessed shall be taxed in proportion to its full value.' Proposition 13 did not repeal or in any way alter the provisions of Article XIII, which presently contains 33 separate sections. Thus Article XIII Section 1 must be given effect." The Court plainly says that effect must be given Article XIII, Section 1. To allow a residential property owner to pay a tax greatly disproportionate to his

neighbor who lives in a substantially identical tract house, or to force that property owner's successor to pay a greatly increased tax on the same property, flies in the face of both Article XIII, Section 1, and over 129 years of California constitutional law.

The Court in **Nashville, Chattonooga and St. Louis Ry Co. v. Browning,** (1940) 310 U.S. 362, 369, 60 S.Ct. 968, 84 L.Ed. 1254; stated: "It would be a narrow conception of jurisprudence to confine the notion of laws to what is found written on the statute books, and to disregard the gloss which life has written upon it. Settled state practice cannot supplant constitutional guarantees, but it can establish what is state law." Since the stated purpose of Article XIIIA was to "make property taxes fair, equal, and within the ability to pay for all Californians", and Article XIII has given equal treatment to all taxpayers for 129 years, it should seem clear that the purpose of Article XIIIA must either be embellished upon, and conformed to, Article XIII or it must fall.

CONCLUSION

The states right to tax and to make classifications for that purpose is broad, but is still limited by the Equal Protection clause of the Fourteenth Amendment to the Constitution of the United States. "Where taxation is concerned and no specific federal right, apart from Equal Pro-

tection, is imperiled, the states have large leeway - -." **Kahn v. Shevin**, (1974) 416 U.S. 351, 355-356; 94 S.Ct. 1734, 40 L.Ed.2d 189. "The Equal Protection Clause of the Fourteenth Amendment protects the individual from state action which selects him out for discriminatory treatment by subjecting him to taxes not imposed on others of the same class." **Hillsborough v. Cromwell**, (1946) 326 U.S. 620, 623; 66 S.Ct. 445, 90 L.Ed. 358. Since Equal Protection is the crux of Appellants' appeal, having had taxes imposed upon them to an extent not imposed upon others of the same class, these Appellants are entitled to serious and genuine review of the law which so imposes that tax.

"The purpose of a Grandfather Clause is to give those engaged in a business being brought under regulation the right to continue their existing business without being subjected to certification requirements that would be applicable if the business were then being started for the first time." **United States Steel Corp. v. Public Utilities Commission**, (1981) 29 Cal.3d 603, 612-613; 629 P.2d 1381, 175 Cal.Rptr. 169. "A Grandfather Clause is one in which a particular year is chosen as the effective date of new legislation in order to prevent inequitable results, or to promote some other legitimate purpose." **Harris v. Alcoholic Beverage Appeals Board**, (1964) 61 Cal.2d 305, 309-310; 392 P.2d 1, 38 Cal.Rptr. 409.

The rationale for the Grandfather Clause seems particularly inapplicable where, as here, all property owners, whether business, income, investment, or residential, have been separated from their similarly situated brethren by the sole device of a property tax lien date. There not only exists no apparent regulatory purpose to sustain this analogy in this case, but there has been created by this Article XIIIA the very inequitable result that the Grandfather Clause doctrine was designed to prevent.

"Taxing by a uniform rule requires uniformity not only in the rate of taxation, but also uniformity in the mode of assessment upon the taxable valuation. Uniformity in taxing implies equality in the burden of taxation, and this equality of burden cannot exist without uniformity in the mode of assessment, as well as in the rate of taxation." **Greene v. Louisville & Interurban R.R. Co.**, (1917) 244 U.S. 499, 515-516; 37 S. Ct. 673, 61 L. Ed. 1280. "The Equal Protection Clause means that the rights of all persons must rest upon the same rule under similar circumstances, and that it applies to the exercise of all the powers of the state which can affect the individual or his property, including the power of taxation." **Louisville Gas and Electric Co. v. Coleman**, (1928) 277 U.S. 32, 37; 48 S. Ct. 423, 72 L.Ed. 770. "The legislature in its discretion may tax all, or it may tax one or some, taking care to accord to all in the same class equality of rights."

Walter v. St. Louis, (1954) 347 U.S. 231, 237; 74 S.Ct. 505, 98 L.Ed. 660.

Article XIII imposes a uniform **rate** of taxation, while at the same time Article XIIIA imposes a greatly disparate mode of assessment, resulting in the non-uniform burden proscribed by the Court in **Green v. Louisville & Interurban R.R. Co.**, (1917) 244 U.S. 499, at 515-516. All persons in circumstances similar to Appellants, i.e., residential property owners, do **not** have their rights resting on the sme rule, and these Appellants have thus **not** been accorded equality of rights.

"The classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." **Royster Guano Co. v. Virginia**, (1920) 253 U.S. 412, 415; 40 S.Ct. 560, 64 L.Ed. 989. "Mere differences are not enough, the attempted classification must always rest upon some difference which bears a reasonable and just relation to the action in respect to which the classification is proposed and can never be made arbitrarily and without any such basis." **Louisville Gas and Electric Co. v. Coleman**, (1928) 277 U.S. at 37.

"A complete reading of the voters pamphlet [re Proposition 13] fails to reveal how the electorate intended to relinquish the established constitutional guaranty providing for taxation on **fair market value**. They merely voted to

limit the increase in the value under certain stated circumstances. Article XIII, Section 1, and 129 years of a historical constitutional principle were left unchanged by the **express** language of 13." (emphasis in original). **State Board of Equalization v. Board of Supervisors**, (1980) 105 Cal.App.3d 813, 821-822.

If the voters merely wished to "limit the increase in value under certain stated circumstances", the classification imposed does not have a "fair and substantial relation to that object". Limitation in such increase could easily be accomplished by a flat bar to any increase in valuation subsequent to the 1975 lien date. To apply that bar only to those already owning property on that date, while leaving those acquiring after that date to pay taxes based on an inflated "acquisition value" is patently unfair, and there can be demonstrated no possible relation between the 1975 lien date and benefits received, or ability to pay, of these classes of taxpayer. Appellants are, relative to their neighbors, indistinquishable from those acquiring property prior to March 15, 1975. In voting to limit their own taxes to the 1975-76 level, while subjecting later purchasers to greatly increased taxes due to the operation of inflation and natural increases in value, the voters in 1978 effectively created a class, identical to themselves, which is forced to subsidize that tax limitation. Appellants, and those similarly situated in thus subsidizing the 1978 voting majority, are suffering from a tyranny of that

majority. That such tyranny is of the majority cannot relieve the Court from its constitutional mandate to expose it for what it is. On the contrary, such tyranny is the essence of appellate review.

"- - - there is no more effective practical guaranty against arbitrary and unreasonable government than to require that the principles of law which officials would impose upon a minority must be imposed generally. Conversely, nothing opens the door to arbitrary action so effectively as to allow those officials to pick and choose only a few to whom they will apply legislation, and thus escape the political retribution that might be visited upon them if larger numbers were affected. Courts can take no better measure to assure that laws will be just than to require that laws be equal in operation.'" **United States Steel Corp. v. Public Utilities Commission**, (1981) 29 Cal. 3d 603, 611-612; 629 p 2d 1381, 175 Cal Rptr 169, quoting Jackson, J. concurring in **Railway Express v. New York**, (1949) 336 U.S. 106, 112-113; 69 S. Ct. 463, 93 L.Ed. 553. "Equal Protection of the law means subjection to equal laws, applying alike to all in the same situation." **Southern Railway Corp. v. Greene**, (1910) 216 U.S. 400, 412; 30 S.Ct. 287, 54 L.Ed. 536.

The voters of California have, in Proposition 13, arbitrarily and unreasonably imposed upon what was, in 1978, a small minority of homeowners who had not taken title to their homes prior to March 15, 1975. That the voters,

rather than elected officials, chose this minority to subsidize the tax rollback enjoyed by the majority does nothing to lessen the seriousness and stringency with which the courts must review the act. There is no demonstrably reasonable difference between the classes of taxpayers created by Article XIIIA. These Appellants, and all who purchased their property after the 1975 lien date, are thus entitled to be subjected to an equal tax law, applied equally. If Article XIIIA cannot be made to so operate, it must fall.

"Minimal scrutiny requires the court to conduct a serious and genuine judicial inquiry into the correspondence between the classification and the legislative goals." **Cooper v. Bray**, (1978) 21 Cal.3d 841, 848; 582 p 2d 604, 148 Cal. Rptr. 148. "[T]he basic idea is to protect taxpayers from unfair and arbitrary classifications and discriminations." **Quaker City Cab Co. v. Penna**, (1928) 277 U.S. 389, 394; 48 S.Ct. 553, 72 L. Ed 927.

To conduct such serious and genuine review, and in order to protect California taxpayers from unfair and discriminatory arbitrary classification, the Court must, if Article XIIIA is to be upheld as presently applied to Appellants, find that the goals of Proposition 13 are a reasonable government objective, are met by the classification, and that such classification is not an unfair and arbitrary discrimination.

The stated goals of Proposition 13 were to provide FAIR,

EQUAL taxation within the Ability of Californians to pay. A serious review must inevitably suggest other means of attaining that goal. For example, **all** property taxes could have been "frozen" at the 1975-76 level. That simplistic approach would certainly be FAIR, operating upon all property owners alike. It would be EQUAL because presumably **all** property in the state was then assessed at the same proportion of its fair market value. It would also be within the Ability of Californians to pay, to the extent such a tax could ever be universally within the ability of the taxpayer to pay, since each taxpayer was at that time presumably paying his or her taxes. Another example of alternatives would be a simple adjustment across the board in assessed value as a proportion of fair market value.

Either of these methods, and others which will come to more fertile minds, would serve the purposes of Proposition 13 as stated. These methods would as ably serve the goal, articulated by the Court in **State Board of Equalization v. Board of Supervisors**, (1980) 105 Cal.App. 3d 813, 821-822, of "merely limiting the increase in value." These simple methods, while perhaps arbitrary, do not discriminate against similarly situated taxpayers, and thus would raise no Equal Protection issue.

Since such easy-to-effectuate and non-discriminatory alternative methods of achieving the goals of the legislation exist, a serious and genuine judicial review of the

legislation must find it seriously wanting in correspondence between the stated goals and the methods used. Since such lack of correspondence exists, there can be no justification for the discriminatory and arbitrary classification of taxpayers into "pre 1975" and "post 1975".

"[I]t must be regarded as settled that intentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property." **Cumberland Coal Co. v. Board**, (1931) 284 U.S. 23, 28; 52 S. Ct. 48, 76 L. Ed. 146; **Sioux City Bridge v. Dakota County**, (1923) 260 U.S. 441, 445; 43 S.Ct. 190, 67 L. Ed. 340. In the case at bar, Appellant's property wa valued, for the 1978-79 taxyear, at $126,000.00 [Cl. tr. pg. 27]. The value of the home on the 1975 lien date, increased by the 2% per year factor mandated by Article XIIIA, was $56,774.63. This latter value is the value the home would have been taxed on had the previous owner kept it. This latter value is also the value on which similar homes in the neighborhood are today being taxed. Appellants are thus required to pay a tax more than twice that paid by pre-1975 owners on substantially identical homes. Appellants, and others of their class who pay this exorbitant subsidy of the benefits enjoyed by members of the same class of property owner who happened to take title prior to March 1975, are entitled, as held in **Cumberland Coal Co. v. Board**, (1931) 284 U.S. 23, 28; 52 S. Ct. 48, 76 L.

Ed. 146; to "have [their] assessment reduced to the percentage of that value of which others are taxed."

"Where it is impossible to secure both the standard of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law." **Cumberland Coal Co. v. Board**, (1931) 284 U.S. at 29. "A reasonable effort must be made to maintain fair valuations for the assessments of all property." **Louisville & N.R. Co. v. Public Services Commission**, (1978) 493 F. Supp. 162, 168.

"The Constitution requires not only that all nonexempt property be taxed, but - - - [that] all property be assessed at the same standard of valuation." **DeLuz Homes Inc. v. County of San Diego**, (1955) 45 Cal.2d 546, 562; 290 p 2d 544.

This was the law in California for more than 129 years. Appellants submit that when Article XIIIA is read in conjunction with Article XIII of the California Constitution, and with the Equal Protection Clause of the Constitution of the United States, it is still the law in California. If such be so, these Appellants, and those others being taxed at widely disparate standards of valuation based upon time of acquisition, are entitled to restoration of the uniformity and equality required by the law, when that law is read as requiring uniformity and equality as its ultimate purpose.

The California Supreme Court, in its previous review of

Article XIIIA, "examine[d] only those principle, fundamental challenges to the validity of Article XIIIA as a whole", and "analysis of the problems which may arise respecting the interpretation or application of particular provisions of the Act [were] deferred for future cases in which those provisions are more directly challenged." **Amador Valley Joint Union High School District v. State Board of Equalization**, (1978) 22 Cal.3d 208, 219; 583 p 2d 1281, 149 Cal. Rptr. 239. Section 2 of Article XIIIA is here directly challenged by Appellants who are required by that section to pay a tax more than twice that paid by their brethren - brethren who are indistinguishable from Appellants in all circumstances, and who reside in homes indistinguishable from that of Appellants. They are indistinguishable in all respects save one - the date on which they took title to their homes. Appellants are entitled to the rigorous review especially applicable to challenges of laws which do not operate uniformly upon all members of a class, and thus do not afford equal protection to all members of that class.

The California Supreme Court, in **Amador Valley** rightly quoted the United States Supreme Court's decision in **Kahn v. Shevin**, (1974) 416 U.S. 351, 355-356; 94 S. Ct. 1934, 40 L. Ed. 2d 189: " 'Where taxation is concerned and no specific federal right, apart from equal protection, is imperiled, the States have large leeway in making classification and drawing lines which in their

judgment produce reasonable systems of taxation.' A state tax law is not arbitrary although it 'discriminates in favor of a certain class - - - if the discrimination is founded upon a reasonable distinction, or difference in state policy.' " **Amador Valley Joint Union High School District v. State Board of Equalization,** (1978) 22 Cal.3d 208 at 233-234, 583 p 2d 1281, 149 Cal. Rptr. 239.

Here, however, we are presented with a specific federal right, that of equal protection. In addition, Article XIIIA does not merely discriminate against a class, such as owners of commercial or income producing property vis-a-vis owners of residential property. Article XIIIA, section 2, discriminates against members of the **same** class, a class distinguished only by the unreasonable distinction of a purchase date. We are also not faced here with a mere "imprecision" of impost. We have here a similarly situated sub-class, of which Appellants are members, which pays double, or more, the tax imposed upon others in the same class.

When the plight of these Appellants is thus viewed, it is respectfully submitted that the California Supreme Court has not addressed the question of Equal Protection as to these Appellants, and **Amador Valley** should thus **not** be viewed as controlling in this case.

When the position of Appellants, relative to other homeowners, is clearly set out it is apparent that they are required to pay a doubly increased tax while enjoying the

identical benefits enjoyed by those whose tax was effectively frozen by Article XIIIA. This disparity cannot be justified by analogizing it to a Grandfather Clause because the very purpose of the Grandfather Clause doctrine is "to give those engaged in a business being brought under regulation the right to continue their existing business without being subjected to certification requirement - - -." **Golden Gate Scenic Steamship Lines, Inc. v. Public Utilities Commission**, (1962) 57 Cal.2d 373, 379; 369 p 2d 257, 19 Cal. Rptr. 657.

Although the Grandfather Clause rationale is perhaps apt for analysis of Article XIIIA as applied to commercial or income properties, Appellants are not businesses. Neither is there any intent discernible from Article XIIIA to regulate homeowners who become such after March, 1975. Rather than being the rigorous analysis attendant a discriminatory tax, application of the Grandfather Clause doctrine merely demands the analysis.

"A basic rule of construction provides that constitutional amendments must, if at all possible, be interpreted in harmony with other relevant portions of the Constitution." **State Board of Equalization v. Board of Supervisors**, (1980) 105 Cal.App.3d 813, 822; 164 Cal.Rptr. 739. Article XIII section 1 provides: "All property so assessed shall be taxed in proportion to its full value."

It is unarguable that different classes of property can be taxed differently and still comport to equal protection.

Where, however, different **properties** of the **same** class are taxed differently there is not only denial of equal protection, but derogation of Article XIII, Section 1, of the California Constitution itself.

If, as held in **State Board of Equalization v. Board of Supervisors**, (1980) 105 Cal.App.3d at 822, the intent of Proposition 13 was to "merely limit the increase in taxes", that intent can be conformed to section 1 of Article XIII by simply "freezing" values of property at its 1975 value. That simple ploy would serve as well to secure to Appellants equal protection under the tax law. Obviously, shortfalls in the State's revenue might well follow. That is a problem properly addressed by the legislature, however. It is not within the purview of the judiciary.

Dated: June 14, 1982

Respectfully submitted,

Frank Anton Gunderson
Attorney for Appellants

PROOF OF SERVICE

I, Shirley Gunderson, Secretary, say:

I am and was at the time of the service hereinafter mentioned a resident of the State of California, County of Ventura, and at least 18 years old. I am not a party to the above-entitled action. My business address is 2239 Townsgate Road, Suite 202, Westlake Village, California.

On June 15, 1982, I deposited in the United States mails at Westlake Village, California, enclosed in sealed envelopes and with the postage prepaid:

Seven copies of Appellant's Opening Brief addressed to:

Clerk, Supreme Court of California
3580 Wilshire Blvd., Room 213
Los Angeles, California 90010

One copy to:
Clerk to Judge Marvin H. Lewis
Superior Court of California for
Ventura County
Hall of Justice
800 S. Victoria Avenue
Ventura, California 93009

Three copies to:

Dorothy Schechter
County Counsel, and
Anthony R. Strauss
Assistant County Counsel
800 S. Victoria Avenue
Ventura, California 93009

There is regular United States mail service between the place of mailing and the above addresses.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on June 14, 1982, at Westlake Village, California.

Shirley Gunderson

PROOF OF SERVICE

STATE OF CALIFORNIA)
)
COUNTY OF RIVERSIDE)

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is 4075 Agate, Riverside, California 92509.

On November , 1983, I served the within JURISDICTIONAL STATEMENT on the interested parties in said action, by placing a true copy in each of three (3) sealed envelopes, with postage thereon fully prepaid, in the United States mail at San Bernardino, California, addressed as follows:

Clerk of Supreme Court	Clerk of Superior Court
State of California	County of Ventura
3580 Wilshire Blvd. #213	501 Poli Street
Los Angeles, CA 90010	Ventura, CA 93001

Dorothy Schechter
County Counsel
800 S. Victoria Ave.
Ventura, CA 93009

I certify under penalty of perjury that the foregoing is true and correct.

EXECUTED on November , 1983 at Riverside, California.

JACK GALLAGHER